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METROPOLITAN BUILDING ACTS,

1855 TO 1882,

TOGETHER

WITH SUCH CLAUSES OF THE

METROPOLIS MANAGEMENT ACTS

AS MORE PARTICULARLY RELATE TO THE BUILDING ACTS.

WITH

NOTES AND FORMS.

BY

WALTER HENRY MACNAMARA, Esq.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW;
REGISTRAR TO THE RAILWAY COMMISSIONERS.

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PREFACE TO THE THIRD EDITION.

THIS edition contains the Building Acts Amendment Acts of 1878 and 1882, the most important of the rules of the Metropolitan Board of Works, and also the principal forms required by unofficial persons.

The Royal Institute of British Architects have issued schedules regulating the professional practice and charges of Architects, and the heads and conditions of Builders' contracts; they will be found set out in the Appendix to this work, together with a precedent of a building contract.

The Editor hopes that this edition will be as favourably received as was the last one, which was prepared by his friend, Mr. Noel H. Paterson, whose death at an early age was much regretted by all who knew him.

W. H. M.

TEMPLE,
November, 1882.

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EXTRACT FROM

PREFACE TO THE FIRST EDITION.

THE Metropolitan Building Act, with Notes illustrative and explanatory, is here offered to the attention of the Profession. It has been thought useful upon some occasions to give a general view of the Law of Building, independently of the Act, as tending to throw light upon the statute itself, and likewise to furnish analogous decisions.

It has been thought proper likewise to add at the end of this Work such of the sections of the Act for the Local Management of the Metropolis as have immediate relation to the Building Act.

H. W. W.

2, HARE COURT, TEMPLE,
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INTRODUCTION.

Introduction.

The main intention of the Building Acts seems to have been, as expressed by Byles, J., "to prevent the metropolis from being covered with combustible structures" (*Stevens* v. *Gourley*, 7 C. B. N. S. 99; 27 L. J. C. P. 1), and the main cause of them arose, most probably, from the great fire of London, in 1666. For in 1667, 19 Car. 2, we find an act for rebuilding the City of London (19 Car. 2, c. 3); and again, in 1670, 22 Car. 2, another act, entitled "An additional Act for the Rebuilding of the City of London, uniting of Parishes and Rebuilding of the Cathedral and Parochial Churches within the said City" (22 Car. 2, c. 11). Again, in 1707, 6 Anne, we have an act to prevent mischiefs that may happen by fire (6 Anne, c. 31. See likewise 7 Anne, c. 17). In 1724, party walls in particular had given rise to so much inquiry and to such litigation, that the mode of reimbursement came to be a matter of more accurate legislation (11 Geo. 1, c. 28). In

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1759, the widening of streets attracted attention, and an act was passed which made regulations for this purpose (33 Geo. 2, c. 30). In this statute also party walls, the ruinous condition of buildings, and the state of pavements were subjects of attention (see sect. 24, *et seq.*). Another act, giving still more extensive powers, passed in 1763 (4 Geo. 3, c. 14); and one other to amend and make more effectual the 33 Geo. 2, c. 30, succeeded three years afterwards (6 Geo. 3, c. 27). A more general act now engrossed the attention of the legislature, repealing some of the earlier statutes upon the subject (12 Geo. 3, c. 73), till at length the whole ripened into the 14 Geo. 3, c. 78, "An Act for the further and better Regulation of Buildings and Party Walls; and for the more effectually preventing Mischiefs by Fire, and for the Indemnity of Builders under certain Circumstances," a statute which, although classed in the public acts, is for the most part local and personal. (*Richards* v. *Easto*, 15 Mees. & W. 244; 3 Dowl. & L. 515.) This act, which was not very intelligible to the learned judges, who did not hesitate to express their disapprobation of its obscurities (*Peck* v. *Wood*, 5 T. R. 130; *Sangster* v. *Birkhead*, 1 Bos. & Pul. 303; *Collins* v. *Wilson*, 4 Bingh. 551; *Williams* v. *Pocklington*, 2 B. & Ald. 878;

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3 T. R. 461; see too *Southall* v. *Leadbetter*, 3 T. R. 458; *Beardmore* v. *Fox*, 8 T. R. 214; *Lambe* v. *Hemans*, 2 B. & Ald. 467; *Taylor* v. *Reed*, 6 Taunt. 249; *Stuart* v. *Smith*, 7 Taunt. 158; see upon the same subject, likewise, *Philp* v. *Donati*, 2 Taunt. 62), incorporated the leading principles of the law concerning these matters, and embraced all the material provisions of the former statutes. The safety of premises against fire, the architectural disposition of the party walls, the compulsory process to make parties assent to such erections, the duties of surveyors, the mode of apportioning expenses, the rewards given for activity in bringing up engines to a fire, and the general forms of procedure necessary towards the carrying out of the act—all these were prominent features in this statute. But notwithstanding the care bestowed upon it, this consolidation of the building law was not a work of skill. The judges seem never to have missed an opportunity of censuring its provisions, they even advised parties to avoid so intricate an act; and had parties rightly understood their own interests, it is probable that many harassing lawsuits would have been saved.

It is not therefore surprising that the legislature should have resolved upon introducing a new act upon the subject. This they did

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by the Act 7 & 8 Vict. c. 84. This, however, was not found satisfactory or free from difficulties, and has for the most part been repealed, and the Act of 1855 substituted for it.

The preliminary part of this Act is principally taken up by the definition of terms; and by introducing the word Owner with a fairly simple definition, as was done by the 7 & 8 Vict. c. 84, the great difficulties raised by the former words "Owner or Owners of improved rent" are obviated.

The first part of the Act carries out what has been described above as the main object of the Act, and provides rules for the construction of buildings such as to secure them as far as possible from danger from fire. Part II. is occupied with provisions for the repair or destruction of dangerous structures; and Part III. with rules for the building and removal and restoration of party structures, and the due sharing of the expense between the owners of the buildings which abut on and use the party structure. A small portion of the Acts of 14 Geo. 3, and 7 & 8 Vict. are still retained in force.

Recent legislation has, in some few particulars, altered the Act of 1855. In 1860 an Act (23 & 24 Vict. c. 52) was passed which relieved buildings used solely for the manufacture of boilers and machinery for

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steam vessels from the rules requiring buildings of more than certain cubical dimensions to be divided by party walls, when such buildings are more than three miles from St. Paul's, are of one floor only and built of incombustible materials.

In 1869 another Act was passed (32 & 33 Vict. c. 82) which transferred the powers over dangerous structures given by the Act of 1855 to the Commissioners of Police from that body to the Metropolitan Board of Works.

By the Acts of 1861 (24 & 25 Vict. c. 87) and 1871 (34 & 35 Vict. c. 39), buildings (other than private dwelling-houses) erected by or with the sanction of the Commissioners of the Exhibition of 1851, and the new buildings of the Foreign Cattle Market at Deptford are exempt from the operation of the building rules of Part I. of the Act of 1855.

That portion of the Act of 7 & 8 Vict. c. 84, which related to noxious businesses, and which was retained in force by the Building Act of 1855, has, as regards several trades, been repealed by the Slaughter-houses Metropolis Act, 1874 (37 & 38 Vict. c. 67), and the provisions of that Act have been substituted.

In 1878 an Act was passed (41 & 42 Vict. c. 32), which effected a considerable extension of the Building Act of 1875. It em-

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Introduction.

powers the Board in certain cases to cause alterations to be made in existing theatres and music-halls, and to make regulations respecting the position and structure of new buildings of that description (*post*, p. 199); and also to make bye-laws with respect to the foundations and sites of houses, buildings, &c., and states the mode in which, and the materials with which they are to be made. The Board have framed a set of bye-laws to carry out this last provision; they will be found set out at p. 184.

By the Act of last session (45 Vict. c. 14), the Metropolitan Board of Works may annex conditions as to the space to be left open where a building is erected beyond "the general or regular line" of buildings in a street, and, after default in the fulfilling of any of such conditions, may procure an order from a magistrate directing the demolition of the building by the owner, and, in default of the building being demolished within the time limited by such order, the Board may enter the premises and demolish the building themselves (see *post*, p. 216). The Act contains somewhat similar provisions with respect to cases "where a building or structure is ruinous, or so far dilapidated as thereby to have become and to be unfit for use or occupation, or is from neglect or otherwise in a structural condition prejudicial to the pro-

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perty in, or to the inhabitants of, the neighbourhood." The Act also extends the open space required to be attached to dwelling-houses (*post*, p. 222), removes a restriction as to the position of hot-water pipes for conveying hot water or steam at low pressure (*post*, p. 224), and makes better provision for the settlement of differences between building and adjoining owners (*post*, p. 229). *Introduction.*

Further, the provisions contained in the Metropolis Local Management Act of 1855, for the naming and numbering of streets, and the keeping of a regular line of buildings, have been amended by the Metropolis Management Amendment Acts, of 1862, 1878, and 1882. And many of the sections of the 14 Geo. III. c. 78, which related to fires, and which were retained by the Act of 1855, have been repealed, in consequence of the establishment of a Metropolitan Fire Brigade, by 28 & 29 Vict. c. 90. These various legislative alterations affecting the principal Act will be found noticed in their places and printed *in extenso* in the Appendix.

The Acts are now in full working order, and various rules and forms have been issued by the Board of Works to carry out the statutory provisions; these are from time to time noticed in the book.

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METROPOLITAN BUILDING ACT, 1855.

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3. Interpretation of certain Terms in this Act.

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4. Limits of Act.
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REGULATION AND SUPERVISION OF BUILDINGS.

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19. Construction of Roofs.
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22. Rules as to Accesses and Stairs in certain Buildings.
23. Rules as to habitable Rooms.
24. Party Arches and Arches over Public Ways.
25. Arches under Public Ways.
26. Rules as to Projections.
27. Separation of Buildings and Limitation of Areas.
28. Rules as to uniting Buildings.
29. Open Spaces near Dwelling Houses.
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31. Buildings to be supervised by District Surveyors.
32. Power to Metropolitan Board of Works.
33. Examination by Institute of British Architects.
34. District Surveyor to have and maintain an Office.
35. District Surveyor may appoint Deputy.
36. Assistant Surveyor may be appointed on Emergency.
37. District Surveyor not to act in case of Works under his professional Superintendence.

Notices to District Surveyors.

38. Notices to be given to District Surveyor by Builder.
39. District Surveyor to cause Rules of this Act to be observed.
40. Notice to be Evidence of intended Works.
41. Penalty on Builders neglecting to give Notice.
42. District Surveyor may enter and inspect Buildings affected by this Act.
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SECT.
44. In case of Emergency Works may be commenced without Notice.

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45. Notice by District Surveyor in case of Irregularity.
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49. Payments to District Surveyors.
50. Metropolitan Board may appoint special Fees for Services not provided for.
51. Surveyors when entitled to Fees.

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55. Power for Metropolitan Board of Works to modify Rules.
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59. Board to issue Forms of Notices.
60. Expenses of Orders to be borne by Builders.
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62. Power to Board to appoint Superintending Architect and Clerks.
63. Superintending Architect may appoint Deputy.
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83. Rights of Building Owner.
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89. Account of Expenses of Works to be delivered to Adjoining Owner within One Month.
90. Adjoining Owner may appeal against Account.
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THE

METROPOLITAN BUILDING ACT, 1855.

18 & 19 VICT. CAP. 122.

An Act to Amend the Laws relating to the Construction of Buildings in the Metropolis and its neighbourhood.

[14th August, 1855.

WHEREAS it is expedient that the laws relating to buildings in the metropolis and its neighbourhood should be amended: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows; (that is to say,)

PRELIMINARY.

Short title.

1. This act may be cited for all purposes as "The Metropolitan Building Act, 1855."

Commencement of act.

2. This act shall, except in cases where it is otherwise expressly provided, come into

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operation on the first day of January, one thousand eight hundred and fifty-six.

Interpretation of certain terms in this act

3. In the construction of this act (if not inconsistent with the context) the following terms shall have the respective meanings hereinafter assigned to them; (that is to say,)

"The treasury" shall mean the Commissioners of her Majesty's Treasury:

"Public building" shall mean every building used as a church, chapel or other place of public worship (*a*); also every building used for purposes of public instruction; also every building used as a college, public hall, hospital (*b*), theatre, public concert room, public ball room, public lecture room, public exhibition room, or for any other public purposes (*c*):

"External wall" (*d*) shall apply to every

(*a*) The chapels of such as dissent from the establishment must be reckoned in this explanation of public buildings.

(*b*) This term has been held by Mr. Patteson, at the Woolwich Police Court to include almshouses (*Collins* v. *Axford, ex rel. am.* 1868).

(*c*) It seems doubtful whether buildings are within this definition if not constantly used for these purposes. See note (*i*), p. 11.

(*d*) A party fence wall (see 8 Vict. c. 85, s. 32) might possibly have come within this definition; but this kind of structure is expressly exempted by the 6th section. A wall is not the less an external wall because another house adjoins to it. There was a dispute between a lessor and a lessee as to the repair of a house which had been damaged by the

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outer wall or vertical enclosure of any building not being a party wall:

"Party wall" (*e*) shall apply to every wall used or built in order to be used as a separation of any building from any other building with a view to the same being occupied by different persons:

"Cross wall" shall apply to every wall

act of a corporation. The lessor had covenanted with his tenant to keep in repair all the external parts of the demised premises, except the glass and lead of the windows. The premises were in the High Street, Exeter, and they adjoined the Swan Inn there. The corporation of Exeter pulled down the Swan Inn, and, in so doing, exposed the wall which had divided the Swan Inn from the house in question. It was contended, amongst other points, that the wall pulled down was not an external wall within the meaning of the covenant; for that the external parts were those which were exposed to the air and to the view of the landlord. But the Court gave judgment against the objection. "We think," said Lord Denman, "that it (the wall) was an external part of the premises before the Swan was pulled down, but certainly afterwards. The external parts of premises are those which form the inclosure of them, and beyond which no part of them extends: and it is immaterial whether those parts are exposed to the atmosphere or rest upon and adjoin some other building which forms no part of the premises let." (*Green* v. *Eales*, 2 Q. B. 225.)

(*e*) Where the owner of a boundary wall built on his own land, against which he had built some closets, and his adjoining neighbour had recently built a substantial structure, it was held, that so far as these buildings extended against both sides of the wall, it was a "party wall" within this section. *Knight* v. *Pursell*, 11 Ch. D. 412; 48 L. T. Ch. 395; and see "party structure," *post*.

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used or built in order to be used as a separation of one part of any building from another part of the same building, such building being wholly in one occupation:

"Party structure" shall include party walls, and also partitions, arches, floors and other structures separating buildings, stories, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without:

The "area" of every building shall be deemed to be the superficies of a horizontal section of such building made at the point of its greatest surface, including the external walls and such portion of the party walls as belong to the building, but excluding any attached building the height of which does not exceed the height of the ground storey (*f*):

"The base of the wall" shall mean the course immediately above the footings:

"Owner" (*g*) shall apply to every person

(*f*) See, however, sect. 13; and see, likewise, Second Schedule, Part II. at the end, "Area."

(*g*) See the notes at Part III. on "Owner" and "Occupier." This expression, in addition to the definition of it here given by the statute, has also received judicial interpretation. The following persons have been held to be owners within the meaning of the present act—(1) The lessee of a chapel for a

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in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement other than as a tenant from year to year or for any less term, or as a tenant at will:

"Builder" shall apply to and include the master builder or other person employed to execute or who actually executes any work upon any building (*h*).

term of twenty-one years (*Monrilyan* v. *Labalmondiere*, 1 E. & E. 533; S. C. *Reg.* v. *Monrilyan*, 3 L. T. N. S. 668). (2) The lessee of a house for ninety-nine years, who has sub-demised parts of it for various smaller terms, although the sub-tenants hold for a longer term than from year to year (*Hunt* v. *Harris*, 19 C. B. N. S. 13; 34 L. J. C. P. 249). (3) A tenant under a building lease at a peppercorn rent, and not the owner in fee, as he is not really in receipt of the profits, *Evelyn* v. *Whichcord*, E. B. & E. 126; 27 L. J. M. C. 211; see, too, *Caudwell* v. *Hanson*, L. R. 7 Q. B. 55; 41 L. J. M. C. 8. Nor does it make any difference that the tenancy is strictly only equitable, as under an agreement for a lease (*Cowen* v. *Phillips*, 33 Beav. 18, a decision which will now apply in all courts.—Jud. Act, 1873, s. 24 (4)). The tenant of a house which has been burnt down, when he, by the terms of his lease, pays no rent till the house is rebuilt, has been held liable under s. 42 of 7 & 8 Vict. c. 84; but as that section contains the words, "entitled to the immediate possession," it is a doubtful authority upon the present act (*Ex parte the Overseers of Saffron Hill*, 24 L. J. M. C. 56). The incumbent of a district church is not an "owner" (*Reg.* v. *Lee*, 4 Q. B. D. 75).

(*h*) If there be no master builder, it would appear that every artificer who works under an estimate, whether carpenter or bricklayer, or who does any

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"District surveyor" shall mean every such surveyor who is appointed in pursuance of this act, or whose appointment is hereby confirmed, and shall include any deputy or assistant surveyor appointed under this act:

In all cases in which the name of an officer having local jurisdiction in respect of his office is referred to without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the officer having jurisdiction in that place within which is situate the building or other subject matter or any part thereof to which such reference applies:

"Person" shall include "a body corporate" (*i*).

independent work, is included in this word. See sect. 38, &c.

(*i*) Alphabetically arranged,—

Area.	Owner.
Base of Wall.	Party Structure.
Builder.	Party Wall.
Cross Wall.	Person.
District Surveyor.	Public Building.
External Wall.	Treasury.
Officer.	

This interpretation clause, it may be noticed, contains no definition of "Building." It has, however, been decided that a wooden structure sixteen feet by thirteen feet intended for permanent use is a "building," although only laid on timber, and not let into the ground; as it is clearly an erection in breach of what Byles, J., called the main intention of the act,

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Limits of Act.

Act to extend to all places within limits defined by 18 & 19 Vict c. 120.

4. This act shall extend to all places within the limits of the metropolis as defined by an act passed in the present session of parliament intituled "An Act for the better local Management of the Metropolis" (*k*), and to all other places to which such last mentioned act may be extended, unless such places are in making such extension expressly excepted from the operation of this act; but nothing herein contained shall affect the exercise of any powers vested by any act of parliament in the Commissioners of Sewers of the city of London for the time being (*l*).

Division of act.

5. This act shall be divided into five parts:

(1.) The first part relating to the

viz., to prevent the erection of combustible structures (*Stevens* v. *Gourley*, 7. C. B. N. S. 99; 27 L. J. C. P. 1).

(*k*) 18 & 19 Vict. c. 120, s. 250. By this section the metropolis is defined as including, "the city of London and the parishes and places mentioned in the Schedules (A), (B) and (C) to the act," and the "City of London shall be deemed to include all parts" at the passing of the act "within the jurisdiction of the Commissioners of Sewers of the City of London." See the above Schedules, *post*, in the Appendix.

(*l*) The City of London Sewers Acts are—1848, 11 & 12 Vict. cap. clxiii.; 1851, 14 & 15 Vict. cap. xii.

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regulation and supervision of buildings:

(2.) The second part relating to dangerous structures:

(3.) The third part relating to party structures (*m*):

(4.) The fourth part relating to miscellaneous provisions:

(5.) The fifth part relating to the repeal of former acts, and to temporary provisions.

(*m*) Which include party walls, s. 3.

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PART I.

REGULATION AND SUPERVISION OF BUILDINGS (*a*) (*b*).

Buildings &c. herein named exempt from operation of Part I. of this act.

6. The following buildings and works (*c*) shall be exempt from the operation of the first part of this act (*d*):

Bridges, piers, jetties, embankment

(*a*) See also 41 & 42 Vict. c. 32, ss. 24 & 25, *post*.

(*b*) These regulations amount to a prohibition of any building in contravention of them within the limits to which they apply (*Stevens* v. *Gourley*, 7 C. B. N. S. 99; 27 L. J. C. P. 1); and therefore a contract made in contravention of the act cannot be enforced (*ibid.* and *Foster* v. *Taylor*, 5 B. & Ad. 887). But if a contract be made to build according to a given plan, and in agreement with the act, and the plan is inconsistent in part with the act, the contract must be carried out, the plan being modified to suit the requirements of the act (*Cubitt* v. *Smith*, 11 L. T. N. S. 298). A building erected in contravention of the act may be ordered to be pulled down (see ss. 10 & 45—48; and *Beaumann* v. *St. Pancras Vestry*, L. R. 2 Q. B. 528; 36 L. J. M. C. 127, on the 75th Section of the Metropolis Management Act, 1862, 25 & 26 Vict. c. 102.)

(*c*) Whether old or new, *i.e.*, whether in existence at the date of the act or thereafter built and made.

(*d*) Observe the *first* part; for if a bridge, &c., be dangerous, or if a wall be a party structure, such are within the later provisions. But see ss. 22, 30.

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PART I.

Regulation and Supervision of Buildings.

walls (*e*), retaining walls, (*f*), and wharf or quay walls:

Her Majesty's royal palaces, and any building in the possession of her Majesty, her heirs and successors, or employed for her Majesty's use or service (*g*):

Common gaols, prisons, houses of correction and places of confinement under the inspection of the inspectors of prisons, and Bethlehem Hospital, and the houses of occupation adjoining:

The Mansion House, Guildhall, and Royal Exchange of the city of London:

The offices and buildings of the Governor and Company of the Bank of England already erected, and which now form the edifice called "The Bank of England," and any offices and buildings hereafter to be erected for the use of the said governor and company, either

(*e*) The powers of the Commissioners of Sewers, however, are not encroached upon. They are indeed expressly saved, and would have survived with reference to these embankments, &c., without such saving.

(*f*) Retaining walls. This wall is a defence in the nature of an embankment.

(*g*) Buildings erected by the Commissioners of Lieutenancy of London for the arms and stores of the militia are within this exemption. (*Reg.* v. *Jay*, 8 E. & B. 469; 27 L. J. M. C. 25.)

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on the site of or in addition to and in connexion (*h*) with the said edifice:

The buildings of the British Museum:

The offices and buildings of the Honourable East India Company already erected, and any offices or buildings hereafter to be erected, for the use of the said company, on the site of or in addition to such existing offices and buildings:

Greenwich Hospital and the buildings in the parish of Greenwich vested in the Commissioners of Greenwich Hospital for the purposes of the said hospital:

All county lunatic asylums, sessions houses, and other buildings belonging to or occupied by the justices of the peace of the county or city in which the same are situated (*i*):

(*h*) This word may be said, perhaps, to include the branch banking houses of the bank. But the word "edifice," signifying a building, might on the other hand, be construed to restrain the exemption within the limit of the Bank itself and its property immediately adjacent. It will be noticed that in describing the exemption of the East India Company, the word "connexion" is omitted; and in Greenwich the buildings belonging to the Hospital *in the parish* are exempted.

(*i*) Probably there are not now any *liberties* within the limits of the act which have a separate commission of the peace. Westminster is a *city* and liberty. Supposing that a building should be found temporarily or partially occupied by justices for public purposes, would this partial user exempt the build-

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PART I.

Regulation and Supervision of Buildings.

The erections and buildings authorized by an act passed in the ninth year of the reign of his late majesty King George the Fourth, for the purposes of a market in Covent Garden:

The cattle market with its appurtenances, erected in pursuance of the Metropolitan Cattle Market Act, 1851:

The buildings belonging to any canal, dock, or railway company, and used for the purposes of such canal, dock, or railway, under the provisions of any act of parliament (*k*):

All buildings, not exceeding in height thirty feet, as measured from the footings of the walls, and not exceeding in extent one hundred and twenty-five thousand cubic feet, and not being public buildings, wholly in one occupation, and distant at least eight feet from

ing? It would seem to be the better opinion that this exemption would not hold. Compare s. 3, note (*c*).

(*k*) A railway arch although let to a tenant who used it as a stable has been held to be exempt, because as a building it was mainly used for the purposes of the railway (*Re Badger*, 8 E. & B. 728; 27 L. J. M. C. 106). It would seem, therefore, that the test to be applied is whether the object for which a building is erected, brings it within the exception, no matter what additional use may be made of it. As to the effect of this act upon a railway company's special act, see *London and Blackwall Railway Co.* v. *The Limehouse District Board of Works*, 3 K. & J. 123.

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the nearest street or alley, whether public or private, and at the least thirty feet from the nearest buildings and from the ground of any adjoining owner (*l*):

All buildings not exceeding in extent two hundred and sixteen thousand cubic feet, and not being public buildings, and distant at least thirty feet from the nearest street or alley, whether public or private, and at the least, sixty feet from the nearest buildings and from the ground of an adjoining owner (*m*):

All party fence walls and greenhouses so far as regards the necessary woodwork of the sashes, doors, and frames:

Openings made into walls or flues for the purpose of inserting therein ventilating valves of a superficial extent not greater than forty square inches, if such valves are not nearer than twelve inches to any timber or other combustible material (*n*).

(*l*) This exemption favours isolated buildings of limited dimensions, and not being public.

(*m*) In this description of exemption it will be observed, the height of the house is omitted, the unity of occupation is not required, and the size, to twelve feet, is extended. But the distance must be thirty instead of eight feet from the nearest street or alley, and sixty instead of thirty feet from the ground of an adjoining owner.

(*n*) To these exempted buildings have now been added, (1) Buildings erected by and with the sanction of the Commissioners for the Exhibition of 1851,

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7. With the exemptions hereinbefore mentioned, this act shall apply to all (*o*) new buildings (*p*); and whenever mention is

Application of act, except exemptions before mentioned, to new buildings.

except such as are erected for private dwelling houses, Metropolitan Building Amendment Act, 1861 (24 & 25 Vict. c. 87). (2) The new buildings of the Foreign Cattle Market erected on the site of Deptford Dockyard, Metropolitan Building Act, 1871 (34 & 35 Vict. c. 39). (3) As regards cubical dimensions, certain buildings used for manufacture of steamship machinery, Metropolitan Building Act (Amendment), 1860 (23 & 24 Vict. c. 52). See note (*d*), supra, and note (*y*) to s. 27 (4). The above acts will be found in the Appendix.

Iron buildings are also in effect exempt by s. 56, but on the ground that the act is *inapplicable* to them; and some other buildings appear to be also contemplated by this section as buildings to which the act is inapplicable.

The exemption would appear to be subject to any specific enactments to the contrary, see ss. 22, 30.

(*o*) *Vide* note (*n*).

(*p*) What is the meaning of being thus exempted? or, rather, what privileges attach to the exemption?

1st. As to the exempted private buildings. They are free from the demands and requirements of the act. They can be altered, added to, pulled down or otherwise dealt with at pleasure. New buildings of the same kind can be raised. The nature of the walls need not be governed by any proper rules as to thickness or proportion, provided they be not dangerous. Other portions of such buildings may be erected without reference to any particular mode of architecture. The works need not be supervised by district surveyors, and they are independent of the Board of Works. It follows, that such works may be done without notice to the district surveyor, from whose proceedings and demands in respect of fees they are exempt. But the exemption ceases if the building be dangerous; in other words that portion of the act which guards against the peril of ruinous erections intervenes as soon as, upon survey, it is certified that danger exists. All these structures

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herein made of any building, it shall, unless the contrary appears from the context, be deemed to imply a new building (*q*).

Building when deemed to be new.

8. A building shall be deemed to be new whenever the enclosing walls thereof have not been carried higher than the footings (*r*) previously to the said first day of January, one thousand eight hundred and fifty-six; any other building shall be deemed to be an old building (*s*).

will, in that case, be regulated by the second division of this statute.

2ndly. As to public buildings. They are expressly exempted from the operation of the first part of the act; but this exemption is modified by sect. 30 which contains a saving as to their construction. That clause, recognizing full liberty from specific rules of building, compels the architect, notwithstanding, to obtain the approval, on the part of the district surveyor, of the work. In the event of disagreement, the powers of the Metropolitan Board are to be called into action. The notice to the surveyor, and the payment of his fees, are consequent upon this modification. But the builder is not tied to the precision required in regard to other buildings. If the public building become dangerous, it will be placed under the management pointed out by the second part of the act.

(*q*) But the exemptions will carry within their limit all new structures and works of the same character as those mentioned, as new bridges, &c.

(*r*) The lower courses of a wall, made wider than the general line, to spread the weight.

(*s*) This section is not satisfied by the mere boundary walls on either side of a plot of ground being built since the date mentioned. Such are not enclosing walls within the meaning of the section (*Tear* v. *Freebody*, 4 C. B. N. S. 228). The substitution of new brickwork for old, the size and form not being altered, is not work affecting an external wall

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Alterations of and additions to old buildings.

9. Any alteration, addition, or other work made or done for any purpose, except that of necessary repair not affecting the construction of any external or party wall, in, to, or upon any old building, or in, to, or upon any new building after the roof has been covered in, shall, to the extent of such alteration, addition or work, be subject to the regulations of this act; and whenever mention is hereinafter made of any alteration, addition or work in, to, or upon any building, it shall, unless the contrary appears from the context, be deemed to imply an alteration, addition or work to which this act applies (*t*).

Re-building old buildings.

10. Whenever any old building has been taken down to an extent exceeding one-half of such building, such half to be measured in cubic feet, the rebuilding thereof shall be deemed to be the erection of a new building; and every portion of such old building that is not in conformity with the regulations of this act shall be forthwith taken down.

Division of old buildings sepa-

11. Whenever any old buildings are separated by timber (*u*) or other partitions not in

within the meaning of this section (*Badger* v. *Denn*, 22 J. P. 129); provided, that is, it be not to the extent mentioned in s. 10.

(*t*) So that, if the repair should involve the construction of any external or party wall, the act will attach. See, also, note (*z*), p. 37.

(*u*) See sect. 17, and schedule (I.), preliminary, No. 1, and sect. 83 (No. 3), sect. 88 (No. 3).

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conformity with this act, then, if such partitions are removed to the extent of one-half thereof, such buildings shall, as respects the separation thereof, be deemed to be new buildings, and be forthwith divided from each other in the manner directed by this act (*x*).

Separation of buildings separated by irregular partitions.

WALLS (*y*).

12. Walls shall be constructed of such substances and of such thickness and in such manner as are mentioned in the first schedule annexed hereto (*z*).

Structure and thickness of walls.

(*x*) If the structure be separated by timber partitions from another structure, and it becomes necessary to repair it to prevent it becoming dangerous, it will probably fall at once within the provisions of the act. If it be not in a dangerous state, owners must be careful how they meddle with their old partitions, lest they come up to the moiety which lets in the act.

(*y*) External, party, cross walls, and party structures being walls. See sect. 3 for the definitions.

(*z*) The Board of Works may make bye-laws as to the description and quality of the substances of walls authorised to be constructed by this section, and for securing stability, the prevention of fires, and for purposes of health. 41 & 42 Vict. c. 32, s. 16. The bye-laws are set out at p. 184. These rules do not, of course, apply to the buildings which are by s. 6 exempted from the operation of Part I. of the act. See *Reg.* v. *Carruthers*, 4 B. & S. 804 ; 33 L. J. M. C. 107. This section prohibits buildings with walls of wood or other combustible substances, and a contract made in violation of this enactment cannot be sued on (*Stevens* v. *Gourley*, 29 L. T. C. P. 1).

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Rules as to recesses and openings.

RECESSES AND OPENINGS.

13. The following rules shall be observed with respect to recesses and openings in walls:

Recesses and openings may be made in external walls, provided,

(1.) That the backs of such recesses are not of less thickness than eight and a half inches (*a*), and,

(2.) That the area of such recesses and openings do not, taken together, exceed one-half of the whole area of the wall in which they are made:

Recesses may be made in party walls, provided that,

(1.) The backs of such recesses are not of less thickness than thirteen inches (*b*); and

(2.) That every recess so formed is arched over, and that the area of such recesses do not, taken altogether, exceed one half of the whole area of the wall of the story in which they are made; and

(3.) That such recesses do not come within one foot of the inner face of the external walls;

(*a*) See schedule (I.), Part I. Table.
(*b*) See schedule (I.), Part I. Table.

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but no opening shall be made in any party wall except in accordance with the rules of this act (*c*).

The word area, as used in this section, shall mean the area of the vertical face or elevation of the wall, pier or recess to which it refers (*d*).

MISCELLANEOUS.

As to timber in external walls.

14. Loophole frames may be fixed within one inch and a half of the face of any external wall, but all other wood work fixed in any external wall (*e*), except bressummers (*f*) and story posts (*g*) under the same, and frames of doors and windows of shops on

(*c*) Recesses may be made in external walls, and openings likewise under specific conditions herein mentioned. Recesses also may, under certain rules, be made in party walls; but openings may not be made in *party* walls, unless the provisions of the Act generally are complied with. See sect. 18 and Part III., concerning party structures.

(*d*) The rules just propounded are calculated to promote security and convenience. Both with regard to the thickness and the area the safety of the building has been consulted. If the thickness had not been attended to, danger as well as discomfort might have ensued. If the area had been suffered to be too largely cut away, the whole building might have been seriously weakened.

(*e*) See *Green* v. *Eales*, 2 Q. B. 225.

(*f*) Bressummers or brestsummers are timbers used to keep the brickwork in place, and aid in the regularity of the settlement.

(*g*) Story posts are similar timbers to bressummers, but upright, while the latter are horizontal.

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the ground story of any building, shall be set back four inches at the least from the external face of such wall.

Rules as to bressummers and other timbers on party walls.

15. The following rules shall be observed with respect to bressummers and timbers:—

(1.) Every bressummer must have a bearing in the direction of its length of four inches at the least at each end, upon a sufficient pier of brick or stone, or upon a timber or iron story post fixed on a solid foundation, in addition to its bearing upon any party wall; and the ends of such bressummer shall not be placed nearer to the centre line of the party walls than four and a half inches:

(2.) No bond timber (*h*) or wood plate (*i*) shall be built into any party wall, and the ends of any beam or joist bearing on such walls shall be at the least four and a half inches distant from the centre line of the party walls:

(3.) Every bressummer bearing upon any party wall must be borne by a templet (*j*) or corbel (*k*) of stone or iron

(*h*) Bond timbers are pieces of wood built into walls to prevent irregular settlement.

(*i*) Wood plates are pieces of wood built into walls to carry the joists.

(*j*) A templet or template is a piece of stone or timber laid under the bearing of a girder or beam to distribute the weight.

(*k*) A corbel is a support or bracket which projects

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tailed through at least half the thickness of such wall, and of the full breadth of the bressummer.

Height and thickness of parapets to external walls.

16. If any gutter, any part of which is formed of combustible materials, adjoins an external wall, then such wall must be carried up so as to form a parapet one foot at the least above the highest part of such gutter, and the thickness of the parapet so carried up must be at the least eight and a half inches, reckoned from the level of the underside of the gutter plate (*l*).

Height of party walls above roof.

17. Every party wall (*m*) shall be carried up above the roof flat or gutter of the highest building adjoining thereto, to such height as will give a distance of fifteen inches measured at right angles to the slope of the roof, or fifteen inches above the highest part of any flat or gutter, as the case may be; and every party wall shall be carried up above any turret, dormer, lantern light, or other erection of combustible materials fixed upon the roof or flat of any building within four feet from such party wall, and shall extend at the least twelve inches higher and wider on each side than such erection; and every party wall sha be carried up

from the building; it is frequently made of timber. Here it must be of stone or iron.

(*l*) See sect. 83 (No. 6); sect. 88 (No. 6).

(*m*) For the definition of party wall, see sect. 3.

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above any part of any roof opposite thereto, and within four feet from such party wall (*n*).

As to chases in party walls.

18. In a party wall no chase (*o*) shall be made wider than fourteen inches, nor more than four and a half inches deep from the face of the wall, nor so as to leave less than eight and a half inches in thickness at the back or opposite side thereof, and no chase may be made within a distance of seven feet from any other chase on the same side of the wall.

As to construction of roofs.

19. The roofs of buildings shall be constructed as follows; that is to say,

(1.) The flat, gutter, and roof of every building, and every turret, dormer, lantern light, skylight, or other erection placed on the flat or roof thereof, shall be externally covered with slates, tiles, metal, or other incombustible materials, except the doors, door frames, windows, and window frames of such dormers, turrets, lantern lights, skylights, or other erections:

(2.) The plane of the surface of the roof of a warehouse or other building used either wholly or in part for purposes of trade or manufacture shall not incline

(*n*) This precaution affords a security against fire. See sect. 83 (No. 6); sect. 88 (No. 6); 10 & 11 Vict. c. 34, s. 109, Towns Improvement Clauses Act.

(*o*) A chase is a recess or indentation in the wall.

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from the external or party walls upwards at a greater angle than forty-seven degrees with the horizon.

Rules as to chimneys and flues.

20. The following rules shall be observed as to chimneys and flues (*p*):

(1.) Chimneys built on corbels of brick, stone or other incombustible materials may be introduced above the level of the ceiling of the ground story if the work so corbelled out does not project from the wall more than the thickness of the wall, but all other chimneys shall be built on solid foundations, and with footings similar to the footings of the wall against which they are built:

(2.) Chimneys and flues having proper doors of not less than six inches square may be constructed at any angle, but in every other chimney or flue the angles shall be constructed of an obtuseness of not less than one hundred and thirty degrees, and shall be properly rounded:

(3.) An arch of brick or stone or a bar of wrought iron must be built over the opening of every chimney to support the breast thereof, if the breast projects

(*p*) The mode of construction of chimneys and flues was regulated by 3 & 4 Vict. c. 85, but this was repealed as regards the metropolis by 7 & 8 Vict. c. 84, which contained rules for such construction, for which the present section is now substituted.

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more than four and a half inches from the face of the wall, and the jamb on either side is of less width than seventeen and a half inches, the abutments must be tied in by an iron bar or bars turned up and down at the ends and built into the jambs for at least eight and a half inches on each side:

(4.) The inside of every flue, and the back or outside, unless forming part of the outer face of an external wall, must be rendered (*q*), pargeted (*r*), or lined with fireproof piping:

(5.) The jambs of every chimney must at the least be eight and a half inches wide on each side of the opening thereof:

(6.) The breast of every chimney, and the front, withe (*s*), partition, and back of every flue, must at the least be four inches in thickness:

(7.) The back of every chimney opening, from the hearth up to the height of twelve inches above the mantel, must at the least be eight and a half inches thick if in a party wall, or four and a half inches thick if not in a party wall:

(*q*) Plastered with lime and hair; usually applied, when work is done in three coats, to the first coat laid on the brickwork.

(*r*) Plastered with a rough kind of plaster.

(*s*) See note (*u*), *post*, p. 26.

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(8.) The thickness of the upper side of every flue, when its course makes, with the horizon, an angle of less than forty-five degrees, must be at the least eight and a half inches:

(9.) Every chimney shaft shall be carried up in brick or stone work all round, at the least four inches thick, to a height of not less than three feet above the roof, flat, or gutter adjoining thereto, measured at the highest point in the line of junction with such roof, flat, or gutter:

(10.) The brickwork or stonework of any chimney shaft, excepting that of the furnace of any steam engine, brewery, distillery, or manufactory, shall not be built higher above the roof, flat, or gutter adjoining thereto, measured from the highest point in the line of junction with such roof, flat, or gutter, than a height equal to six times the least width of such chimney shaft at the level of such highest point in the line of junction, unless such chimney shaft is built with and bonded to another chimney shaft not in the same line with the first, or otherwise rendered secure:

(11.) There shall be laid, level with the floor of every story, before the opening of every chimney, a slab of stone, slate,

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or other incombustible substance, at the least twelve inches longer than the width of such opening, and at the least eighteen inches wide in front of the breast thereof:

(12.) On every floor, except the lowest floor, such slab shall be laid wholly upon stone or iron bearers, or upon brick trimmers (*t*); but on the lowest floor it may be bedded on the solid ground:

(13.) The hearth or slab of every chimney shall be bedded wholly on brick, stone, or other incombustible substance, and shall be solid for a thickness of seven inches in the least beneath the upper surface of such hearth or slab:

(14.) No flue shall be built against any party structure, unless a withe (*u*) is properly secured thereto, at the least four inches in thickness:

(15.) No chimney breast or shaft built with or in any party wall shall be cut away unless the district surveyor certifies that it can be done without in-

(*t*) Trimmers are pieces of timber framed at right angles to the joists opposite to chimneys or the well-holes of stairs; they receive the ends of the joists intercepted by the opening. For these by the present act brickwork must be substituted in front of chimneys.

(*u*) A withe here is apparently a brick or stone division to separate the flues from the party wall.

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juriously affecting the stability of any building:

(16.) No chimney shaft, jamb (*x*), breast or flue shall be cut into except for the purpose of repair, or doing some one or more of the following things:

Of letting in or removing or altering flues, pipes, or funnels for the conveyance of smoke, hot air, or steam, or of letting in, removing, or altering smoke jacks:

Of forming openings for soot doors, such openings to be fitted with a close iron door and frame:

Of making openings for the insertion of ventilating valves, subject to the following restriction, that no opening shall be made nearer than twelve inches to any timber or combustible substance:

(17.) No timber or woodwork shall be placed,

In any wall or chimney breast nearer than twelve inches to the inside of any flue or chimney opening;

Under any chimney opening within

(*x*) Jambs are the upright sides of any opening in a wall, which bear the beam or arch over the opening.

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eighteen inches from the upper surface of the hearth of such chimney opening;

Within two inches from the face of the brickwork or stonework about any chimney or flue, where the substance of such brickwork or stonework is less than eight and a half inches thick, unless the face of such brickwork or stonework is rendered (*y*).

And no wooden plugs shall be driven nearer than six inches to the inside of any flue or chimney opening, nor any iron holdfast or other iron fastening nearer than two inches thereto.

Rules as to close fires and pipes for conveying vapour, &c. and penalty for breach of them.

21. The following rules shall be observed as to close fires, and pipes for conveying heated vapour or water; that is to say,

(1.) The floor under every oven or stove used for the purpose of trade or manufacture, and the floor around the same for a space of eighteen inches, shall be formed of materials of an incombustible and non-conducting nature:

(2.) No pipe for conveying smoke, heated air, steam, or hot water shall be fixed against any building on the face next to any street, alley, mews, or public way:

(*y*) See note to s. 20 (4).

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(3.) No pipe for conveying heated air or steam shall be fixed nearer than six inches to any combustible materials (*z*) :

(4.) No pipe for conveying hot water shall be placed nearer than three inches to any combustible materials (*z*) :

(5.) No pipe for conveying smoke or other products of combustion shall be fixed nearer than nine inches to any combustible materials :

And if any person fails in complying with the rules of this section he shall for each offence incur a penalty not exceeding twenty pounds, to be recovered before a justice of the peace (*a*).

Rules as to accesses and stairs in certain buildings.

22. The following rules shall be observed with respect to accesses and stairs :

In every public building (*b*), and in every other building containing more than one hundred and twenty-five thousand cubic feet, and used as a dwelling house for separate families, the floors of the lobbies, corridors, passages, and landings,

(*z*) These rules do not apply in the case of pipes for conveying hot water or steam at low pressure ; 45 Vict. c. 14, s. 16.

(*a*) See sect. 103, and 11 & 12 Vict. c. 43.

(*b*) See sect. 3, and note the exemptions, sect. 6. This provision would seem to override the exemptions of certain public buildings in sect. 6 as to the stone stairs, &c. See also sect. 30.

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and also the flights of stairs, shall be of stone or other fire-proof material, and carried by supports of a fire-proof material.

Rules as to habitable rooms.

23. The following rules shall be observed with respect to habitable rooms in any building; that is to say,

(1.) Every habitable room hereafter constructed in any building, except rooms in the roof thereof and cellars (*c*), and underground rooms, shall be in every part at the least seven feet in height from the floor to the ceiling:

(2.) Every habitable room hereafter constructed in the roof of every building shall be at the least seven feet in height from the floor to the ceiling throughout not less than one half the area of such room (*d*):

(3.) Cellars (*e*) and underground rooms shall be constructed in manner directed by the said Act for the better

(*c*) Vide note (*e*).

(*d*) There may, therefore, be some sloping or leaning walls, provided half the room be of the height of seven feet.

(*e*) As to what is a cellar within this section, see *Hamilton* v. *St. George's, Hanover Square*, L. R. 9 Q. B. 42; 43 L. J. M. C. 41. The meaning there given, however, has reference so much to the particular section (18 & 19 Vict. c. 120, s. 102) on which it is decided that it may be too restricted to be a guide for the present act.

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local management of the metropolis (*f*):

And whosoever knowingly suffers any room that is not constructed in conformity with this section to be inhabited, shall, in addition to any other liabilities he may be subject to under this Act, incur a penalty not exceeding twenty shillings for every day during which such room is inhabited (*g*); and any room in which any person passes the night shall be deemed to be inhabited within the meaning of this Act.

As to party arches and arches over public ways and passages.

24. Every party arch (*h*), and every arch or floor over any public way, or any passage leading to premises in other occupation, shall be formed of brick, stone, or other incombustible materials: if an arch of brick or stone is used, it shall, in cases where its span does not exceed nine feet, be of the thickness of four and a half inches at the least, but when its span exceeds nine feet, be of the thickness of eight and a half inches at the least: if an arch or floor of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the district surveyor (*i*).

(*f*) 18 & 19 Vict. c. 120, ss. 101, 102, 103, 104; 25 & 26 Vict. c. 102, s. 62. See Appendix.

(*g*) See sect. 103, and 11 & 12 Vict. c. 43.

(*h*) Observe:—Every party arch, *and* every arch, &c.

(*i*) See sect. 83 (No. 5), and sect. 88 (No. 5) as to the repair and expense.

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As to arches under public ways.

25. Every arch under any public way shall be formed of brick, stone, or other incombustible materials: if an arch of brick or stone is used, it shall, in cases where its span does not exceed ten feet, be of the thickness of eight and a half inches at the least; where its span does not exceed fifteen feet, it shall be of the thickness of thirteen inches at least; and where its span exceed (*k*) fifteen feet, it shall be of such thickness as may be approved by the district surveyor: if an arch or other construction of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the district surveyor (*l*).

Rules as to projections.

26. The following rules shall be observed as to projections (*m*):

(*k*) Sic.

(*l*) See the Metropolis Management Act, 1855, s. 101, as to the consent of vestries or district boards being required for the building of these arches.

(*m*) It will be observed that this act does not in terms repeal the sections of the Metropolitan Paving Act, 57 Geo. 3, c. 29 (usually known as Michael Angelo Taylor's Act), which relates to projections. But it would seem that it does so by implication, so far as the present act is less strict than the earlier local act; and therefore the Metropolitan Board of Works as representing the Paving Commissioners (18 & 19 Vict. c. 120, s. 90) could not sustain a conviction against anyone for anything which, though in breach of the earlier act, is not in breach of the present act. (*Reg.* v. *Pratt*, 24 L. T. O. S. 235.) See, however, as to the effect of the clauses of the earlier Building Act, 7 & 8 Vict. c. 84, on the Paving Act, *Reg.* v. *Ingham*, 21 L. J. M. C. 125.

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(1.) Every coping, cornice, facia (*n*), window dressing (*o*), portico, balcony, verandah, balustrade, and architectural projection or decoration whatsoever, and also the eaves or cornices to any overhanging roof, except the cornices and dressings to the window fronts of shops, and except the eaves and cornices to detached and semi-detached dwelling houses distant at least fifteen feet from any other building, and from the ground of any adjoining owner, shall, unless the Metropolitan Board otherwise permit (*p*), be of brick, tile, stone, artificial stone, slate, cement, or other fire-proof material:

(*n*) A projection under the eaves of a building.

(*o*) Any work round or about the window.

(*p*) The following rule has been made by the Metropolitan Board of Works:—All applications must be made in writing on foolscap paper, setting forth the nature of the building, work, or other matter; the situation and district in which the same is to be built; also describing all necessary particulars as to the proposed mode of construction; and stating under which section of the act the sanction is sought; to be accompanied by a block plan in duplicate * on tracing cloth, drawn to a scale of 44 feet to one inch for general lines of buildings, and 22 feet to one inch for projections. The dimensions must be figured thereon, and the situation of the building shown with reference to adjoining buildings, and to the ground of any adjoining owner.

* A third copy of plans is required when approved.

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(2.) In streets or alleys of a less width than thirty feet, any shop front may project beyond the external wall of the building to which it belongs for five inches and no more; and any cornice of any such shop front may project thirteen inches and no more; and in any street or alley of a width greater than thirty feet, any shop front may project ten inches and no more, and the cornice may project for eighteen inches from the external walls, but no more (*q*).

(3.) No part of the woodwork of any shop front shall be fixed nearer than four and a half inches from the line of junction of any adjoining premises, unless a pier or corbel (*r*) of stone, brick, or other fire-proof material, four and a half inches wide at the least, is built or fixed next to such adjoining premises as high as such woodwork is fixed, and projects an inch at the least in front of the face thereof:

(4.) The roof, flat, or gutter of every building, and every balcony, verandah, shop front, or other projection, must be so arranged and constructed, and so supplied with gutters and pipes, as to

(*q*) See *Read* v. *Perrett*, 1 Ex. D. 349.
(*r*) See note to sect. 15 (3).

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prevent the water therefrom from dropping upon or running over any public way:

(5.) Except in so far as is permitted by this section in the case of shop fronts, and with the exception of water pipes and their appurtenances, copings, cornices, facias (*s*), window dressings, and other like architectural decorations, no projection from any building shall extend beyond the general line of fronts in any street (*t*), except with the permission of the Metropolitan Board of Works hereinafter mentioned (*u*).

(*s*) See note (*m*), p. 32.

(*t*) Whether a certain place is or is not a street is a question of fact, and therefore the magistrate's decision thereon cannot be appealed against by a case under 20 & 21 Vict. c. 43 (*Newman* v. *Baker*, 8 C. B. N. S. 200). A decision by a magistrate that he has no jurisdiction to hear a summons because the *locus in quo* is not a street within the meaning of the act, is an adjudication, and therefore a mandamus will not lie against the magistrate. *Reg.* v. *Dayman*, 7 E. & B. 672; 26 L. J. M. C. 128. In this case Erle, J., differing from the majority of the Court, thought that as the decision was as to the foundation of the magistrate's jurisdiction the mandamus could issue. The opinion of the majority seems to be supported by the earlier case of *Reg.* v. *Bolton*, 1 Q. B. 66; 10 L. J. Q. B. 95, where the judgment of Lord Campbell, C.J., may be usefully read as going fully into the point of when the magistrate's decision is on the merits, and when on a pure question of jurisdiction. See also *Reg.* v. *The Justices of Llanfillo*, 15 L. T. N. S. 277. See, too, 18 & 19 Vict. c. 120, s. 143.

(*u*) By a rule of the Metropolitan Board of Works, no application relative to any erection proposed to

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Rules as to the separation of buildings, and limitation of their areas.

27. The following rules shall be observed as to the separation of buildings, and limitation of their areas:

(1.) Every building shall be separated by external or party walls from any adjoining building:

(2.) Separate sets of chambers or rooms tenanted by different persons shall, if contained in a building exceeding three thousand six hundred square feet in area, be deemed to be separate buildings, and be divided accordingly, so far as they adjoin vertically by party walls and so far as they adjoin horizontally by party arches or fireproof floors:

(3.) If any building in one occupation is divided into two or more tenements, each having a separate entrance and staircase, or a separate entrance from without, every such tenement shall be deemed to be a separate building for the purposes of this Act:

be made beyond the general line of fronts will be granted, unless a notice that such application is to be made shall have been given to or left by an officer of the board for the occupiers of the two adjoining buildings on each side of the proposed building; and no such application will be brought before the board until after the expiration of fourteen days from the date of such notice, unless the parties upon whom such notice has been served shall have previously sent in their reply to the superintending architect's office. See also note to sect. 26 (1).

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(4.) Every warehouse, or other building (*x*) used either wholly or in part for the purposes of trade or manufacture, containing more than two hundred and sixteen thousand cubic feet, shall be divided by party walls in such manner that the contents of each division thereof shall not exceed the above-mentioned number of cubic feet (*y*).

Rules as to uniting buildings.

28. The following rules shall be observed as to uniting buildings:

(1.) No buildings shall be united, unless they are wholly in the same occupation:

(2.) No buildings shall be united, if when so united they will, considered as one building only, be in contravention of any of the provisions of this Act (*z*):

(*x*) These words are usually read as *ejusdem generis* with "warehouse." See schedule 1, part II. (1). See however, s. 108, and note thereto.

(*y*) By the Metropolitan Building Act (Amendment) 1860 (23 & 24 Vict. c. 52), buildings used wholly for the manufacture of machinery and boilers for steam vessels, beyond three miles from St. Paul's, are exempt from this clause; provided they consist of one floor only, and are constructed of incombustible material, and that the other rules of the act of 1855 applicable to such buildings have been complied with. Such buildings, if over two hundred and sixteen thousand cubic feet, are within s. 56, q. v. See the act, *post*.

(*z*) The alteration of an old building by an addition is not within this rule, unless the addition was at

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(3.) No opening shall be made in any party wall dividing buildings, which, if taken together, would contain more than two hundred and sixteen thousand cubic feet, except under the following conditions (*a*):

Such opening shall not exceed in width seven feet or in height eight feet.

Such opening shall have the floor, jambs (*b*), and head formed of brick, stone, or iron, and be closed by two wrought iron doors, each one-fourth of an inch thick in the panel, at a distance from each other of the full thickness of the wall, fitted to rebated frames (*c*), without woodwork of any kind (*d*):

(4.) Whenever any buildings which have

some time a separate building in itself (*Scott* v. *Legg*, 46 L. J. M. C. 267 ; 2 Ex. D. 39).

(*a*) This section will apply to a case where two buildings were connected by an old opening, and a new opening is made connecting a third building with one of the two, if the three buildings together exceed the dimensions given in this sub-section. (See *Ashby* v. *Woodthorpe*, 33 L. J. M. C. 68 ; 12 W. R. 209 ; 9 L. T. N. S. 409.)

(*b*) See note to s. 20.

(*c*) A rebated frame describes a recess formed in the frame to receive the door.

(*d*) Precautions to combine strength of structure with security against fire or other casualty.

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been united cease to be in the same occupation, any openings made in the party walls dividing the same shall be stopped up with brick or stone work of the full thickness of the wall itself, and properly bonded therewith.

Open spaces near dwelling-houses required for ventilation and light.

29. Every building used or intended to be used as a dwelling house, unless all the rooms can be lighted and ventilated from a street or alley adjoining, shall have in the rear or on the side thereof an open space exclusively belonging thereto of the extent at least of one hundred square feet.

Construction of public buildings.

30. Notwithstanding anything herein contained (*e*), every public building (*f*) including the walls, roofs, floors, galleries, and staircases, shall be constructed in such manner as may be approved by the district surveyor, or, in the event of disagreement, may be determined by the Metropolitan Board (*g*), and, save in so far as respects the

(*e*) See sect. 6.

(*f*) As to what is a public building, see sect. 3.

(*g*) In any case in which a disagreement shall arise between the district surveyor and the builder or building surveyor, under the provisions contained in the 30th section of the Metropolitan Building Act as to the mode of constructing any public building, upon which the decision of the Board becomes necessary, the question shall be brought before the Board by one of the parties by a memorial setting forth the facts of the case, accompanied by plans and explanations, upon receipt of which the

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rules of construction, every public building shall throughout this act be deemed to be included in the term building, and be subject to all the provisions of this act, in the same manner as if it were a building erected for a purpose other than a public purpose.

DISTRICT SURVEYORS (*h*).

Buildings to be supervised by district surveyors.

31. With the exemptions hereinbefore mentioned (*i*), every building and every work done to, in, or upon any building, shall be subject to the supervision of the district surveyor appointed to the district in which the building is situate.

Power to Metropolitan Board of Works established under 18 & 19 Vict. c. 120.

32. The following things may be done by the Metropolitan Board of Works, established by the said act for the better local management of the metropolis (*k*), by order, at their discretion; that is to say,

(1.) They may alter the limits of any

superintending architect shall communicate with the other party and require him to furnish similar information in support of his case; and when the same shall have been received the whole matter shall be laid before the Board, before whom the parties shall be required to appear, and if deemed necessary, with witnesses. (Rule 11 of Superintending Architect's Department, Metropolitan Board of Works.) See also note (*p*), p. 33.

(*h*) As to what the term "District Surveyor" includes, see s. 3.

(*i*) Refer to and compare sects. 6, 22, and 30.

(*k*) 18 & 19 Vict. c. 120.

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district, or unite any two or more districts together, and in any such case, place such altered district under the supervision of any existing or of any future district surveyor, with power from time to time to alter any district so made, and do all such matters and things as are necessary for carrying into effect the power hereby given:

(2.) They may dismiss any existing district surveyor, with the consent of one of her Majesty's Principal Secretaries of State; they may suspend any such surveyor as last aforesaid; they may dismiss or suspend any future district surveyor; and in case of any suspension or during any vacancy they may appoint a temporary substitute:

(3.) Whenever any vacancy occurs in the office of any existing or future district surveyor they may appoint another qualified person in his place:

(4.) They may pay such amount of compensation as they think fit to any district surveyor who may be deprived of his office, in pursuance of the power hereby given of altering the limits of districts:

But, subject to the provisions herein con-

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tained, the several places which at the time when this act comes into operation are constituted districts under an act passed in the eighth year of the reign of her present Majesty, chapter eighty-four (*l*), and intituled "An Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood," for the purposes of that act, shall continue to be districts for the purposes of this act, and the several persons who at the time when this act comes into operation are district surveyors under the provisions of the said act shall continue to be district surveyors under this act.

Examination by Institute of British Architects.

33. The Institute of British Architects may from time to time cause to be examined, by such persons and in such manner as they think fit, all candidates presenting themselves for the purpose of being examined as to their competency to perform the duties of district surveyor, and shall grant certificates of competency to the candidates found deserving of the same; and no person who has not already filled the office of district surveyor, or has not already obtained a certificate of competency in pursuance of the said act of the eighth year of the reign of her present Majesty, chapter eighty-four (*m*), shall be qualified to be ap-

(*l*) Sect. 3 of that act.
(*m*) Sect. 66 of that act.

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pointed to that office, unless he has received a certificate of competency from the said Institute of British Architects, or has been examined in such other manner as the said Metropolitan Board may direct, and been found competent in such examination:

District surveyor to have and maintain an office.

34. Every district surveyor shall have and maintain an office at his own expense in such part of his district as may be approved by the Metropolitan Board of Works.

District surveyor may appoint deputy, with consent.

35. If any district surveyor is prevented by illness, infirmity, or any other unavoidable circumstance from attending to the duties of his office, he may, with the consent of the Metropolitan Board of Works, appoint some other person as his deputy to perform all his duties for such time as he may be prevented from executing them.

Assistant surveyor may be appointed on emergency

36. If at any time it appears to the Metropolitan Board of Works that, on account of the pressure of business in any district, or any other account, the surveyor of that district cannot discharge his duties promptly and efficiently, then such Board may direct any other district surveyor to assist the surveyor of such district in the performance of his duties, or appoint some other person to give such assistance, and such assistant surveyor shall be entitled to receive all fees payable in respect of the services performed by him.

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District surveyor not to act in case of works under his professional superintendence.

37. If any building is executed, or any work done to, in, or upon any building, by or under the superintendence of any district surveyor acting professionally or on his own private account, it shall not be lawful for such surveyor to survey any such building for the purpose of this act, or to act as district surveyor in respect thereof or in any matter connected therewith, but it shall be his duty to give notice thereof to the said Metropolitan Board, who shall then appoint some other district surveyor to act in respect of such matter (*n*).

NOTICES TO DISTRICT SURVEYORS (*o*).

Notices to be given to district surveyor by builder.

38. Two days before the following acts or event (*p*), that is to say (*q*),

(*n*) The superintending architect may not practise as an architect, nor follow any other occupation (sect. 62); but no such inhibition is placed upon the district surveyor.

(*o*) As to limitation of time for any action being taken by surveyors where due notice has not been given, see sect. 105.

(*p*) But see the provision in favour of works done upon emergency, sect. 44.

(*q*) The day of the giving of the notice under this section will probably be included in the two days. (See *Castle* v. *Burditt and others*, 3 T. R. 623; *Rex* v. *Adderley*, 2 Dougl. 462.) But the principle laid down in those cases, viz., that, "where the computation is to be made from an act done the day when the act was done is to be included," is too wide. (See per M. R. in *Lester* v. *Garland*, 18 Ves. 248.)

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Two days before any building or any work to (*r*), in, or upon any building, is commenced (*s*), and also, if the pro-

(*r*) This means such a work as belongs to the construction of buildings under this act.

(*s*) See 11 & 12 Vict. c. 63, ss. 49, 53, with respect to notice of building and re-building, as far as drains and water-closets are concerned. 11 & 12 Vict. cap. 112, s. 47, Metropolis Sewers Act.

Care in building so as to prevent public inconvenience and private injury is required by the act. It does not, however, interfere with the common law remedy in case damage should be done by works to the property of another. Too much caution can hardly be adopted in meddling with structures which are in any way involved with the property of others. Indeed, if a wall or building be damaged, and the person who has done the mischief go, without leave, upon the land of the owner to repair it, he is liable to an action for such trespass. (*Taylor* v. *Stendall*, 7 Q. B. 634; *S. C.* 3 Dowl. & L. 161.) And although, under restrictions, the owner of premises may, under this act, by complying with its provisions, execute some works without the leave of an adjoining owner (see sect. 82, *et seq.*); yet the builder, or building owner, as he is called, is not exonerated from his common law obligation to build in a workmanlike manner; and is, consequently, liable for unnecessary damage. (See *Bower* v. *Peate*, L. R. 1 Q. B. D. 321; 45 L. J. M. C. 446.) On the other hand, a person is justified in pulling down a building erected upon his freehold by a trespasser, even although the trespasser is within the building at the time. As where the plaintiff had built upon a vacant space of ground by the side of the road, upon which the parish officers came and pulled down the building whilst the plaintiff was within. It was left to the jury to say whether the soil of the building was in the parish officers, and upon their affirming that it was, the verdict on the principal issue was entered for the defendants; and the Court refused a rule for a new trial on the ground of misdirection (*Burling* v. *Read and others*, 29 L. J. Q. B. 291). Where,

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gress of any such building or work is after the commencement thereof

however, the soil is not in the person who thus ventures to pull down a building whilst parties are within, as where, in order to enjoy his right of common, the defendant demolished a dwelling-house whilst the family were actually in the building; this was held to be an illegal act (*Perry* v. *Fitzhowe*, 8 Q. B. 757; 19 L. J. Q. B. 292). This case is distinguished in *Burling* v. *Read* (supra) on, perhaps, substantial grounds; but the apparent ground of the decision in *Perry* v. *Fitzhowe*, that to pull down a house with persons in it is dangerous to human life and specially likely to promote a breach of the peace, would seem to apply equally to *Burling* v. *Read*. Nevertheless, the measure of damages does not involve the rebuilding of the place, so as to make a new instead of an old house. The defendants are apparently answerable only to the extent of the value of the old building. (*Lukin and another* v. *Godsall*, Peake Add. Ca. 15: *S. P. Per* Parke B., *Hide* v. *Thornbrough*, 2 Car. & K. 250.)

The state of the adjoining owner's own house must also be considered both in regard to the amount of damages, and also as to whether the injury was really caused by the negligence of the building owner. (*Dodd* v. *Holme*, 3 N. & M. 379; 1 A. & E. 493; *Bradbee* v. *The Mayor of London*, 4 M. & G. 614; 5 Sc. N. R. 79; and see *Warburton* v. *London and Blackwall Ry. Co.*, 1 Rail. Ca. 558.)

The injury must be appreciable to support an action in any case in which the defendant is not *primâ facie* in the wrong, as his act can then only become wrongful by virtue of the injury done by it. (*Smith* v. *Thackerah*, L. R. 1 C. P. 564; 35 L. J. C. P. 276.)

The officers under this act have no power to meddle with the legal title of the builders. Therefore, if there be an encroachment by any person the remedy will remain, as at common law, by abatement or an action of trespass; but licence from the plaintiff or his predecessor will remove the liability. (See on this, *Coventry* v. *Stone*, 2 Stark. 534.) But a

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suspended for any period exceeding three months (*t*), two days before such building or work is resumed, and also if during the progress of any such building or work the builder employed thereon is changed, then two days before any new builder enters upon the continuance of such building or work,

It shall be the duty of the builder (*u*) engaged in building or rebuilding such building, or in executing such work, or in continu-

continuance without licence would draw upon the defendant a fresh action after notice. The recovery of damages for the original wrong will not hinder proceedings for discontinuance of the nuisance; unless such continuance can be said to have been taken into account in assessing the damages for the original trespass. (*Holmes* v. *Wilson*, 10 Ad. & El. 503, and note thereto.)

If any danger should be apprehended of an immediate character, and the provisions of the Building Act cannot be put into operation with effect, the course is to apply for an injunction. (*Warburton* v. *London and Blackwall Ry. Co.*, 1 Rail. Ca. 558.) But the 44th section is in aid to enable persons to commence works in cases of emergency, upon giving notice within twenty-four hours to the district surveyor.

(*t*) Of course it is now sufficiently well known that where a month is simply mentioned in any act of parliament, it means a calendar month. 13 Vict. c. 21, s. 4.

(*u*) See sect. 3 as to the meaning of "builder." The owner may be the builder if he is the chief agent in drawing or executing the work. If there be no master builder, and there be a carpenter to do certain portions, and a bricklayer to do other portions, it seems that both must specify their intended works in the notice or notices.

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ing such building or work, to give to the district surveyor notice in writing stating the situation, area, and height, and intended use of the building or buildings about to be commenced, or to, in, or upon which any work is to be done, and the number of such buildings if more than one, and also the particulars of any such proposed work, and stating also his own name and address, but any works to, in, or upon the same building that are in progress at the same time may be included in one notice (*x*).

District surveyor to cause rules of this act to be observed.

39. Every district surveyor shall, upon the receipt of any such notice as aforesaid, and also upon any work affected by the rules of this act, but in respect of which no notice has been given, being observed by or made known to him, and also from time to time during the progress of any works affected by the rules and directions of this act, as often as may be necessary for securing the due observance of such rules, survey any building or work hereby placed under their* supervision, and cause all the rules of this act to be duly observed (*y*).

* *sic.*

(*x*) See schedule (M) of the act 7 & 8 Vict. c. 84. Whether there be one or more persons who answer to the description of builder (sect. 3), it would seem sufficient to give one notice. The fee to the surveyor is only single if there be but one notice (sect. 49).

(*y*) There seems to be no penalty affecting the surveyor should he neglect this supervision so as to create inconvenience to the builder.

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Notice to be evidence of intended works.

40. Every notice given in pursuance of this act shall be deemed, in any question relative to any building or work, to be *primâ facie* evidence as against such builder of the nature of the building or work proposed to be built or done (*z*).

Penalty on builders neglecting to give notice.

41. If any builder neglects to give notice (*a*) in any of the cases aforesaid, or executes any works of which he is hereby required to give notice before giving the same, or having given due notice of any works, executes the same before the expiration of two days (*b*) from the time of giving such notice, such builder shall for every such offence incur a penalty not exceeding twenty pounds, to be recovered before a justice of the peace (*c*).

District surveyor may enter and inspect buildings affected by this act.

42. At all reasonable times during the progress of any building or work affected by this act it shall be lawful for the district surveyor to enter and inspect such building or work; and if any person refuses to admit such surveyor to inspect such building or work, or refuses or neglects to afford such

(*z*) He must, in effect, be bound by his own handwriting.

(*a*) As far as the surveyor is concerned, it seems that if he should superintend the work, he may be said to have waived the notice (*Wells* v. *Ody*, 7 C. & P. 22); but the waiver would not cover the forfeiture.

(*b*) See note (*q*), sect. 38.

(*c*) See sect. 103, and 11 & 12 Vict. c. 43.

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surveyor all reasonable assistance in such inspection, in every such case the offender shall incur for each offence a penalty not exceeding twenty pounds, to be recovered before a justice of the peace (*d*).

Penalty for refusal.

District surveyor may enter buildings to ascertain as to their right to exemption.

43. The district surveyor may at all reasonable times enter any premises, with the exception of buildings hereinbefore exempted by name (*e*), for the purpose of ascertaining whether any buildings erected in such premises are in such a situation or possess such characteristics as are hereinbefore required in order to exempt them from the operation of this Act (*f*), and he may do all such things as are necessary for the above purpose; and if any person refuses to admit such surveyor to enter such premises or to inspect any such building, or neglects to afford to him all reasonable assistance in such inspection, in every such case the offender shall incur for each offence a penalty not exceeding twenty pounds, to be recovered before a justice of the peace (*g*).

In case of emergency works may be commenced without notice.

44. If by reason of any emergency any act or work is required to be done immediately, or before notice can be given as aforesaid, then it shall be lawful to do the

(*d*) See sect. 103, 11 & 12 Vict. c. 43.
(*e*) Sect. 6.
(*f*) Under sect. 6, where certain buildings are mentioned for exemption, *but not by name.*
(*g*) Sect. 103, and 11 & 12 Vict. c. 43.

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act or work so required to be done, upon condition, that before the expiration of twenty-four hours after such act or work has been begun notice thereof is given to the district surveyor (*h*).

PROCEEDINGS BY DISTRICT SURVEYORS IN CASE OF IRREGULARITY.

45. In the following cases, that is to say,—

If in erecting any building or in doing any work to, in or upon any building, anything is done contrary to any of the rules of this act, or anything required by this act is omitted to be done; or

In cases where due notice has not been given,—

If the district surveyor, on surveying or inspecting any building or work, finds that the same is so far advanced that he cannot ascertain whether anything has been done contrary to the rules of this act, or whether anything re-

(*h*) Unless there is wilful default, the magistrate would probably dismiss the summons to recover a penalty under sect. 41, where the defence is emergency. It would seem that the 44th section is directory in this respect, and that a discretion is reposed in the justice.

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quired by the rules of this act has been omitted to be done;

In every such case the district surveyor shall give to the builder engaged in erecting such building, or in doing such work, notice in writing requiring such builder, within forty-eight hours from the date of such notice, to cause anything done contrary to the rules of this act to be amended, or to do anything required to be done by this act, but which has been omitted to be done, or to cause so much of any building or work as prevents such district surveyor from ascertaining whether anything has been done or omitted to be done as aforesaid to be to a sufficient extent cut into, laid open, or pulled down (*i*).

On non-compliance with notice, justice to summon builder, and make order to comply with requisition.

46. If the builder to whom such notice is given makes default in complying with the requisition thereof within such period of forty-eight hours, the district surveyor may cause complaint of such non-compliance to be made before a justice of the peace (*k*), and such justice shall thereupon issue a summons requiring the builder so in default to appear before him; and if upon his appearance, or in his absence, upon due proof

(*i*) And any penalty incurred may be recovered within six months. (See 11 & 12 Vict. c. 43, s. 11.)

(*k*) Whether by information and upon oath is not specified; but there is no special reason why a sworn information should be required.

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of the service of such summons, it appears to such justice that the requisitions made by such notice or any of them are authorized by this act, he shall make an order on such builder, commanding him to comply with the requisitions of such notice, or any of such requisitions that may in his opinion be authorized by this act, within a time to be named in such order.

Penalty on non-compliance with order of justice.

47. If such order is not complied with, the builder on whom it is made shall incur a penalty not exceeding twenty pounds a day, to be recovered before a justice of the peace (*l*), during every day of the continuance of such non-compliance, and in addition thereto the district surveyor may, if he thinks fit, proceed with a sufficient number of workmen to enter upon the premises, and do all such things as may be necessary for enforcing the requisitions of such notice, and for bringing any building or work into conformity with the rules of this act, and all expenses incurred by him in so doing and in any such proceedings as aforesaid, may be recovered from the builder on whom such order was made, in a summary manner (*m*), before a justice of the peace, or may be recovered from the owner of the premises

(*l*) See sect. 103, and 11 & 12 Vict. c. 43.

(*m*) The mode of proceeding is expressly provided for, by sect. 103.

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in the same manner in which expenses incurred by the commissioners hereinafter named in respect of dangerous buildings are hereinafter directed to be recovered from any owner (*n*), and if the owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the district surveyor shall have the same power of taking and selling the building in respect of which the order is made, and of applying the proceeds, as is thereby given to the commissioners (*o*).

Penalty on workmen, &c., doing anything contrary to rules of act.

48. If any workman, labourer, servant, or other person employed in or about any building, wilfully, and without the privity or consent of the person causing such work to be done, does anything in or about such building, contrary to the rules of this act, he shall for each such offence incur a penalty not exceeding fifty shillings (*p*).

FEES OF DISTRICT SURVEYORS.

Payment to district surveyors in

49. There shall be paid to the district surveyors (*q*), in respect of the several

(*n*) See sect. 73.

(*o*) Under sect. 74.

(*p*) Sect. 103, 11 & 12 Vict. c. 43. Doing any work without permission; persisting in doing work after prohibition; wilful disobedience to the act, &c.

(*q*) The interpretation clause includes the deputy and assistant surveyor within the expression "district surveyor."

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matters specified in the first part of the second schedule hereto, the fees therein specified (*r*), or such other fees, not exceeding the amounts therein specified, as may from time to time be directed by the Metropolitan Board of Works (*s*); but one fee only shall be chargeable with respect to any such works done in, to or upon any building as are in pursuance of the provisions hereinbefore contained included in one notice; and if in consequence of any reduction being made by the said Metropolitan Board in the amount of the said scheduled fees the income of any existing district surveyor is diminished, the Metropolitan Board shall grant to him compensation in respect of such diminution.

respect of matters in first part of second schedule

50. If any special service is required to be performed by the district surveyor under the first part of this act, for which no fee is specified in the said schedule, the Metropolitan Board of Works may order such fee to be paid for such service as they think fit, and the district surveyor shall have the same remedy for recovering such special fee as if the same were expressly named in the said schedule (*t*).

Metropolitan Board may appoint special fees for services not provided for.

(*r*) See that schedule and note thereto.

(*s*) But the surveyor may be compensated by a salary instead of fees, if it so please the Metropolitan Board of Works. (Sect. 65.)

(*t*) See sect. 51, *infra*.

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Periods when surveyors entitled to fees.

51. At the expiration of the following periods, that is to say,

of one month after the roof of any building surveyed by any district surveyor under this act has been covered in,

of fourteen days after the completion of any such work as is by this act placed under the supervision of the district surveyor,

of fourteen days after any special service in respect of any building has been performed,

the district surveyor shall be entitled to receive the amount of fees (*u*) due to him from the builder employed in erecting such building, or in doing such work, or in doing any matter in respect of which any special service has been performed by the surveyor, or from the owner or occupier of the building (*x*) so erected or in respect of which such work has been done or service performed;

(*u*) See the second schedule.

(*x*) The person responsible is the person who filled any of these positions in respect to the building at the time the fees became due: *Tubb* v. *Good*, L. R. 5 Q. B. 443; 39 L. J. M. C. 135. The reversioner of land let on a building lease for eighty-one years, in respect of which a peppercorn rent only is payable at the time of the accrual of fees to the district surveyor, is not an "owner" within this section, so as to be liable for the surveyor's fees (*Evelyn* v. *Whichcord*, 27 L. J. M. C. 211; 1 E. B. & E. 126). See also *Caudwell* v. *Hanson*, L. R. 7 Q. B. 55; 41 L. J. M. C. 8.

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and if any such builder, owner or occupier refuses to pay the same, such fees may be recovered in a summary manner before a justice of the peace (*y*), upon its being shown to the satisfaction of such justice that a proper bill specifying the amount of such fees was delivered to such builder, owner, or occupier, or sent to him in a registered letter addressed to his last known residence.

RETURNS BY DISTRICT SURVEYORS.

District surveyors to make monthly returns to Metropolitan Board of Works.

52. Every district surveyor shall, within seven days after the first day of every month, make a return to the Metropolitan Board of Works, in such manner as they may appoint, of all notices and complaints received by him relative to the business of his district, and the results thereof, and of all matters brought by him before any justice of the peace, and of all the several works supervised and special services performed by him in the exercise of his office within the previous month, and of all fees charged or received in respect thereof, and specify in such return

(*y*) Sect. 103, 11 & 12 Vict. c. 43. The decision of such justice may be appealed from by case under 20 & 21 Vict. c. 43, notwithstanding anything contained in s. 106 (*Power* v. *Wigmore*, L. R. 7 C. P. 386; 27 L. T. N. S. 148. See, too, *Steele* v. *Brannan*, 41 L. J. M. C. 85).

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PART I. *Regulation and Supervision of Buildings.*

the description and locality of every building built, rebuilt, enlarged, or altered, or on which any work has been done under his supervision, with the particular nature of every work in respect of which any fee has been charged or received.

Return duly signed to be a certificate that works are agreeable to act.

53. Every such return shall be signed by such surveyor, and shall be deemed to be a certificate that all the works enumerated therein as completed have been done in all respects agreeably to this act, according to the best of his knowledge and belief, and that they have been duly surveyed by him.

Superintending architect to audit accounts of fees charged by district surveyors, and to report in case of excess.

54. The officer hereinafter mentioned (*z*) as the superintending architect of metropolitan buildings, or such other officer as the Metropolitan Board of Works appoint, shall from time to time examine the said monthly returns made by the district surveyors; and in case any fees therein specified appear to such officer to be unauthorized by this act, or to exceed in amount the rates hereby made payable, or in case any such account appears to be in any respect fraudulent or untrue, he shall make his report in writing to that effect to the Metropolitan Board of Works, who shall thereupon take such steps in the matter as they deem expedient (*a*).

(*z*) Sect. 62.

(*a*) The former act, 7 & 8 Vict. c. 84, subjected a surveyor who took unauthorized fees to a fine or

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POWERS OF METROPOLITAN BOARD OF WORKS.

Power for Metropolitan Board of Works to modify rules.

55. The Metropolitan Board of Works may, by order, made with the consent of her Majesty in council, alter, in such manner as they may think fit, the rules for the regulation of the thickness of walls contained in the first schedule hereto (*b*).

Buildings to which rules of act are inapplicable, to be subject to approval of the Board.

56. Whenever any builder is desirous of erecting any iron building (*c*), or any other building (*d*) to which the rules of this act are inapplicable, he shall make an application to the Metropolitan Board of Works (*e*), stating such desire, and setting out a plan of the proposed building, with such particulars as to the construction thereof as may be required by the said board; and the latter, if satisfied with such plan and particulars, shall signify their approval of the same, and thereupon such building may be constructed according to such plan and parti-

discharge from his office. See s. 79 of that act, and *Reg.* v. *Badger*, 6 E. & B. 137; 25 L. J. M. C. 81.

(*b*) This power renders unnecessary the intervention of the legislature with reference to the thickness of walls.

(*c*) See sect. 112.

(*d*) This is usually read as meaning, by the doctrine *ejusdem generis*, any building of similar incombustible material to iron.

(*e*) See sect. 26 (1) and note, and 41 & 42 Vict. c. 32, s. 16.

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culars; but it shall not be lawful for such board to authorize any warehouse or other building used either wholly or in part for the purposes of trade or manufacture to be erected of greater dimensions than two hundred and sixteen thousand cubic feet, unless it is divided by party walls in manner hereinbefore required (*f*).

Power of Metropolitan Board to make general rules.

57. The said Metropolitan Board may, for the purpose of regulating the proceedings of such applicants as aforesaid (*g*), from time to time issue such general rules as to the time and manner of making such appli-

(*f*) See sects. 17, 18, and other sections. This section will apply to such buildings used for the manufacture of machinery and boilers for steam vessels as are exempted from the operation of s. 27 (4), if their dimensions exceed two hundred and sixteen thousand cubic feet (23 & 24 Vict. c. 52, s. 2).

By a rule of the Metropolitan Board of Works all builders or other persons who may be desirous of erecting any chimney-shaft of a steam-engine, brewery, distillery, or manufactory, or any iron building or other building to which the rules of the Metropolitan Building Act, 1855, are inapplicable, shall, before commencing any such building, make an application to this board requesting their approval thereof, setting out a plan and section (with all scantlings figured) of the proposed building, and such other necessary particulars as may be required by the board. The scale of drawings must be one quarter of an inch to one foot. When a chimney-shaft is applied for, the arrangements to be made for the consumption of the smoke from the furnaces with reference to the Sanitary Act of 1866 must be shown on plan.

(*g*) *I.e.*, under sect. 56.

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cations, as to the plans to be presented, as to the expenses to be incurred, and as to any other matter or thing connected therewith, as they may think fit (*h*).

Approval of Board, how signified.

58. The approval by the Metropolitan Board of Works of any plans or particulars, in pursuance of the foregoing provisions, shall be signified by writing under the hand of the superintending architect of metropolitan buildings, and countersigned by the chairman of such board, or by any other officer appointed by the board.

Board to issue forms of notices.

59. (*i*) The said Metropolitan Board may from time to time prepare or sanction forms of the various notices (*k*) required by this act, and may from time to time make such alterations therein as they deem requisite; and they shall cause every such form to be sealed with the seal of the board, or marked with some other distinguishing mark; and any notice made in a form sanctioned by the board shall in all proceedings be held sufficient in law.

(*h*) See these rules noted under various sections.

(*i*) This section seems scarcely in its right place. It should, probably, follow sect. 60.

(*k*) As—the notice by the district surveyor under sect. 48; that under sect. 72, dangerous structures, &c. But it is not to be understood that builders are to be bound to take their forms of notices from the board. The notices emanating *from* the board, or their officers, seem to be contemplated by the clause. Others, however, are supplied by the Board. See p. 88.

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PART I.

Regulation and Supervision of Buildings.

Expenses of obtaining approval of Board to be borne by builders.

60. (*l*). All expenses incurred in and about the obtaining such approval of the Metropolitan Board of Works as aforesaid shall be paid by the builder to the said superintending architect, or to such other person as the said board may appoint, and in default of payment may be recovered in a summary manner (*m*).

District surveyor to see plans carried into execution.

61. A copy of any plans and particulars, approved by the Metropolitan Board of Works, shall be furnished to the surveyor within whose district the building to which such plans and particulars relate is situate, and thereupon it shall be the duty of such district surveyor to ascertain that the same is built in accordance with the said plans and particulars (*n*).

(*l*) We now return to the iron or other buildings mentioned in sect. 56.

(*m*) Sect. 103, and 11 & 12 Vict. c. 43. By a rule of the Metropolitan Board of Works it has been ordered, "that on deposition of applications under s. 56, a fee of five shillings shall be paid into the hands of the cashier of the board, and a further fee of five shillings on obtaining the order of the board approving of the design for such building; and in no case will the work be allowed to proceed until the fees are paid.

(*n*) This clause appears to be limited to the plans and particulars denoted in the 56th section, although it is expressed generally. It has been ordered by the Board of Works that in the event of the sanction of the board being granted duplicate drawings or tracings on cloth must be supplied by the applicant for transmission to the district surveyor for his guidance.

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Power to Metropolitan Board to appoint superintending architect and clerks.

62. The Metropolitan Board of Works may, for the purpose of aiding in the execution of this act, appoint some fit person, to be called the "Superintending Architect of Metropolitan Buildings," together with such number of clerks as they think fit; such architect and clerks shall be removable by the said Metropolitan Board, and shall perform such duties as the said board direct; but it shall not be lawful for any superintending architect to practise as an architect, or to follow any other occupation (*o*).

(*o*) This officer, the "superintending architect," is the successor of the "official referee" of the old act, 8 Vict. c. 84. His powers, however, are more simply defined. He is, moreover, more under control than was the official referee. He holds his office, and performs his work immediately under the direction of the Board of Works. He is not only prohibited from acting as a surveyor, but likewise from carrying on the business of an architect. His whole time is claimed on behalf of the public. The official referee was allowed to practise as an architect, provided he did not interfere in his official character with any building in which he was concerned. The Commissioners of Works and Buildings had, indeed, a position with regard to the referees in some instances, but the referees themselves held their appointment from the secretary of state. They acted as judges, and took evidence and made awards. They had their registrar and subscribed a declaration of official fidelity. But the superintending architect under our present law is a man of business, created by the Metropolitan Board. He is removable by them, receives his salary from them, appoints his deputy with their consent, accounts for moneys received to them, and is, in effect, an officer of ministerial, not of judicial, functions.

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PART I.

Regulation and Supervision of Buildings.

Superintending architect may appoint deputy, with consent.

63. If the superintending architect is prevented by illness, infirmity, or any other unavoidable circumstance from attending to the duties of his office, he may, with the consent of the Metropolitan Board of Works, appoint some other person as his deputy to perform all his duties for such time as he may be temporarily prevented from executing them.

Salaries to architect and clerks.

64. There shall be paid to such superintending architect and clerks such salaries as the said Metropolitan Board may from time to time direct.

EXPENSES.

Power of Metropolitan Board to pay salaries in lieu of fees.

65. The said Metropolitan Board may at any time hereafter, by order, cause such fixed salary as they may determine to be paid to any district surveyor by way of remuneration instead of fees, provided the amount of such remuneration be not less than the amount of the average of the fees for the last three years; and thereupon such surveyor shall pay all fees received by him under this act into the hands of the said superintending architect.

Moneys received by superintending architect to be paid to the Metropolitan Board.

66. All moneys received by the superintending architect in pursuance of this act shall be accounted for and paid by him into the hands of the treasurer of the said

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Metropolitan Board, at such time and in such manner as the said board may direct.

Metropolitan Board may pay salaries out of rates.

67. The said Metropolitan Board may at any time hereafter provide, either wholly or partially, for the payment of salaries to the district surveyors, or to any of them, out of the rates leviable by such board, in pursuance of the said act for the better local management of the metropolis (*p*), and may thereupon abolish or reduce any fees hereby made payable to the district surveyors.

Expenses how borne.

68. All expenses of carrying into execution this act, not hereby otherwise provided for, shall be deemed to be expenses incurred by the said Metropolitan Board in the execution of the said act for the better local management of the metropolis, and shall be raised and paid accordingly (*q*).

(*p*) 18 & 19 Vict. c. 120, s. 158, *et seq.*; 25 & 26 Vict. c. 102, s. 5, *et seq.*

(*q*) *Ibid.*

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PART II.

Dangerous Structures.

PART II.

DANGEROUS STRUCTURES (*a*).

Survey to be made of dangerous structures. 8 Vict. c. 84, s. 40 (*c*).

69. Whenever it is made known to the commissioners hereinafter named (*b*) that any structure (including in such expression any building, wall (*d*) or other structure, and anything affixed to or projecting from any building, wall or other structure) is in a dangerous state, such commissioners shall require a survey of such structure to be made by the district surveyor, or by some other competent surveyor, and it shall also be the duty of the district surveyor to make

(*a*) Compare 10 & 11 Vict. c. 34, ss. 75—78, Towns Clauses Improvement Act. It must be remembered that apart from the provisions of this act, any structure which is so out of repair as to be dangerous to persons passing along a highway is a nuisance for which an indictment will lie (*Reg.* v. *Watts*, 1 Salk. 357, cited with approval in the judgment in *Fisher* v. *Prowse*, 2 B. & S. 779), and the owner may be liable in damages to any passer-by who is injured thereby (*Tarry* v. *Ashton*, L. R. 1 Q. B. D. 314; 45 L. J. Q. B. &c. 261).

(*b*) *I.e.* the persons named in the next section. See note to s. 70.

(*c*) Notwithstanding the marginal note the section referred to is repealed.

(*d*) Including party walls, party fence walls, &c.

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known to the said commissioners any information he may receive with respect to any structure being in such state as aforesaid.

Definition of "commissioners."

70. In cases where any such structure is situate within the city of London or the liberties thereof hereinafter included under the expression "the city of London," the expression "the commissioners" shall mean "the Commissioners of Sewers of the City of London" (*e*); [*but when such structure is situate elsewhere it shall mean "the Commissioners of Police of the Metropolis," or such one of them as may be authorized by one of her Majesty's principal secretaries of state to act in the matter of this act* (*f*).]

Surveyor on completion of survey to give certificate.

71. Upon the completion of his survey the surveyor employed shall certify to the said commissioners his opinion as to the state of any such structure as aforesaid.

Proceedings to be taken in respect of certificate.

72. If such certificate is to the effect that such structure is not in a dangerous state, no further proceedings shall be had in respect thereof, but if it is to the effect that the same is in a dangerous state, the com-

(*e*) See 11 & 12 Vict. c. 63.

(*f*) The portion of this section and of sections 75 and 81 which are printed in italics are repealed by the Metropolitan Building Act, 1869 (32 & 33 Vict. c. 82), by which the powers of the Commissioners of Police in respect of Part II. of the act are transferred to the Metropolitan Board of Works. See the act of 1869 in Appendix.

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PART II. *Dangerous Structures*

missioners shall cause the same to be shored up, or otherwise secured, and a proper hoard (*g*) or fence to be put up for the pro-

(*g*) See 10 & 11 Vict. c. 34, ss. 1, 79—83 inclusive. There has been an immemorial custom in the city of London to put up hoards for the safety of passengers. A person who carried on a business in the city complained of the mayor and commonalty of London for erecting a hoard, and continuing it for an unreasonable time, by which means the footway remained in a state of obstruction, and the approach to the plaintiff's messuage and business was materially hindered. The mayor pleaded an immemorial custom to set up a hoarding so as to obstruct or inclose any part of a public way during the erection or pulling down of any building within the city, provided the party so making the hoard had first obtained the licence of the lord mayor. The plea then stated that such licence had been obtained upon condition of first getting a licence from the surveyor of pavements. And the plea then went on to say that the last-mentioned licence had been obtained. The Court held the custom good, and said that the mayor was the fit judge of the time during which the hoarding should be continued. Consequently, as the plea of the custom was pleaded generally by the defendants as to the keeping and continuing of the hoarding, certain sums awarded by the arbitrator as damages for the maintenance of the hoarding beyond a certain period, and likewise for otherwise delaying and retarding the work, were disallowed by the Court (*Bradbee* v. *Mayor of London*, 4 Man. & Gr. 714, 756, 764 : *S. C.* 5 Scott, N. R. 79 : *S. C.* 2 Dowl. N. R. 164). It was said by counsel *arguendo* in this case that *Morley* v. *The Goldsmiths' Company* (a case tried before Tindal, C.J., but not reported) did not apply, because there the jury had found that the hoard had not been continued for an unreasonable time (4 Man. & Gr. 753). In the case of *Bradbee* v. *Mayor of London*, the licence was for a hoard to contain in front sixty-four feet, projecting from the same four feet, and to continue four weeks, and the licence

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tection of passengers, and shall cause notice in writing to be given to the owner or occupier (*h*) of such structure requiring him forthwith to take down, secure, or repair the same, as the case requires.

On non-compliance with notice justice to summon owner, &c., and make order to comply with requisition.

73. If the owner or occupier to whom notice is given as last aforesaid fails to comply, as speedily as the nature of the case permits, with the requisition of such notice, the said commissioners may make complaint thereof before a justice of the peace; and it shall be lawful for such justice to order the owner, or on his default the occupier (*i*), of any such structure

from the surveyor was to erect and continue four hoards in manner and for the time above mentioned.

(*h*) This is not to be read owner *and* occupier. The meaning is, that the owner *or* occupier or person in possession should be approved; and if he be owner as well as occupier, the word "owner" will still apply. In practice, both will, doubtless, be served. It is obvious that the tenant might be out of the way, and it would then be indispensable to fix the owner. The incumbent of a district church in the metropolis, although the freehold is vested in him under the Church Building Acts, is not an "owner" within these sections so as to be personally liable for the expenses incurred by the board in respect of such church as a dangerous structure (*Reg.* v. *Lee*, 4 Q. B. D. 75; 48 L. J. M. C. 22).

(*i*) Under sect. 72, either owner or occupier may be served; both probably will be served. Under sect. 73, the owner is the first subject of the justice's order, upon the default of both owner and occupier in attending to the notice of the commissioners. Where an order was made by a magistrate for an owner to take down a structure or otherwise secure the party walls, and upon his default the board them-

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to take down, repair, or otherwise secure, to the satisfaction of the surveyor who made such survey as aforesaid, or of such other surveyor as the said commissioners may appoint, such structure or such part thereof as appears to him to be in a dangerous state, within a time to be fixed by such justice (*j*); and in case the same is not taken down, repaired, or otherwise secured within the time so limited, the said commissioners may with all convenient speed cause all or so much

selves executed the works and took a summons against the owner for the expenses incurred, it was held, first, that upon the hearing of such summons the owner could not object to his being made liable for expenses actually incurred, by merely showing that they included items which were in excess of the market price of labour and materials at the date of the execution of the works. Secondly, that he could not require that the other owners of the party-walls should be summoned in order that the expenses might be distributed among them (*Debenham* v. *Met. Board of Works*, 6 Q. B. D. 112; 50 L. J. M. C. 29).

(*j*) An order made under this section will be bad unless it aver that the person has been summoned and that the complaint is found to be true: *Labalmondière* v. *Frost*, 1 E. & E. 527; 28 L. J. M. C. 155; see, too, *Reg.* v. *Williams*, 18 Q. B. 393. This is also probably an omission which is not amendable under 12 & 13 Vict. c. 45, s. 27, but see *Reg.* v. *Inhabitants of Hellingley*, 1 E. & E. 749; 28 L. J. M. C. 167. On a summons to recover expenses which are made payable by this section, the validity of the order may be inquired into: *Labalmondière* v. *Frost*, *supra*. It would also appear to be necessary that the order should in terms find the defendant guilty of the thing prohibited by the act, and in doing so should follow as far as possible the words of the act, see *Rex* v. *Hollis*, 2 Stark. 536.

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of such structure as is in a dangerous condition to be taken down, repaired, or otherwise secured, in such manner as may be requisite (*k*): and all expenses (*l*) incurred by the said commissioners in respect of any dangerous structure by virtue of the second part of this act shall be paid by the owner of such structure (*m*), but without preju-

(*k*) The inmates may be removed. Sect. 80.

(*l*) Fees to the district surveyor form part of such expenses. Sect. 79; and Schedule 2, Part II. In these expenses, sums charged for preparation of notices and forms, and for service of notices will be allowed, but not a sum for general office expenses, as such are not properly incurred in consequence of the owner's default: *Metropolitan Board of Works* v. *Flight*, L. R. 9 Q. B. 58; 43 L. J. M. C. 46. The expenses may be recovered, although the owner complies with the requisition and repairs before the hearing of the summons against him, and the summons is accordingly withdrawn, *ibid.*

(*m*) The words "owner," &c., "being entitled to the immediate possession thereof, if known," which were in the corresponding part of 7 & 8 Vict. c. 84, are left out. Therefore a tenant for life will now be liable under the term "owner." (See *Ex parte Overseers of Saffron Hill*, 24 L. J. M. C. 56, and note thereto; and sect. 3 of this act, the interpretation clause.) These expenses are recoverable summarily, and therefore under 11 & 12 Vict. c. 43 (see s. 103, *infra*). The six months limited for proceeding run from the date of demand and refusal of payment, not from the date of the completion of the works (*Labalmondière* v. *Addison*, 1 E. & E. 41; 28 L. J. M. C. 25; see, too, *Edleston* v. *Francis*, 7 C. B. N. S. 568; 3 L. T. N. S. 270). Where these expenses have been incurred and paid by a tenant for life under a will in respect of premises forming part of the demised property, they become a charge on the property generally (*Ex parte Davis*, 3 De G. & J. 144; 4 Jur. N. S. 1029).

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dice to his right to recover the same from any lessee or other person liable to the expenses of repairs (*n*).

If owner cannot be found commissioners may sell structure, giving the surplus to owner, &c.

74. If such owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the said commissioners, after giving three months' notice of their intention to do so, by posting a printed or written notice in a conspicuous place, on the structure in respect of which or of part of which they have incurred expense, or on the land whereon it stands, may sell such structure (*o*), and they shall, after deduct-

(*n*) And the rights of the lessee or tenant as against the landlord, if any, remain as at common law. (See sect. 111.)

(*o*) This is in effect to abate the dangerous structure as a nuisance. Among other inconveniences of a condemnation for building contrary to the act, it may be observed, that a compensation clause in a local act will not apply if a party wall be within such condemnation, unless there be express words. Where a party wall belonging to two houses, one of which had been bought by the Hungerford Market Company, was condemned as being out of repair, it was held that the tenant of the adjoining premises was not entitled to compensation in consequence of the pulling down of such wall by the company. The only material damage done was the temporary inconvenience sustained by the pulling down and rebuilding of this wall, such as the expense of removing from, and being kept out of, the premises while the works were in progress, loss of stock, trade, &c. The Court discharged a rule for a mandamus to the company calling upon them to issue their warrant to summon a jury. And the Court thought that even if the company had not proceeded in strict conformity with the Building Act, it did not, therefore, follow

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ing from the proceeds of such sale the amount of all expenses incurred by them, restore the surplus (if any) to the owner (*p*). [The person to whom the same is sold may enter on land where structure is for purpose of taking down and removing, and persons obstructing or impeding are liable to a penalty. 41 & 42 Vict. c. 32, s. 19, *post*, p. 192. Where the proceeds of such a sale are insufficient to repay the expenses incurred by the Board, no part of the land where such structure stands or stood is to be built on, until the balance due to the Board has been paid. 41 & 42 Vict. c. 32, s. 19.]

Payments by or to the commissioners, &c. how made.

75. All payments hereby directed to be made by or to the commissioners (*q*) shall in the cases of payments in respect of any structure situate within the city of London be made by or to the chamberlain of the city out of or to the consolidated rate made

that they were amenable to the compensation clause of the local act. (*R.* v. *Hungerford Market Company, Ex parte Yeates*, 1 Ad. & El. 668; 2 Nev. & M. 340.) (See, too, *R.* v. *Hungerford Market Company, Ex parte Eyre*, 1 Ad. & El. 676; 3 Nev. & M. 622.) Nevertheless, perhaps, an action might have lain (1 Ad. & El. 684); but the tenant had suffered the time allowed for such action to elapse.

(*p*) See sect. 47. The owner in his turn will be responsible for any damages to his tenant, if there be any agreement or covenant broken in respect of the dangerous structure.

(*q*) See note to sect. 70.

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by the Commissioners of Sewers, [*and in the cases of payments in respect of any structure situate elsewhere within the limits of this act be made by or to the receiver of Metropolitan Police* (*q*)], in the same manner in which payments are made by or to such chamberlain and receiver respectively in the ordinary course of their business; but no commissioner or other officer shall be liable in respect of any loss that may be sustained by any person in consequence of the exercise by the said commissioners of the powers hereby given them, unless such loss happens through the wilful default of such commissioner or other officer.

Surplus how to be applied if no demand made for it.

76. In cases where any surplus is hereby made payable to any owner, if no demand for the same is made by any person entitled thereto within one year, then the same shall be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery (*r*), to be placed to his account there to the credit of the owner (describing him so far as the commissioners can), subject to the control of the Court, and to be paid out to the owner on his applying by petition, and proving his title thereto.

(*q*) See note to sect. 70.
(*r*) Now the Paymaster-General, 35 & 36 Vict. c. 44.

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Fees to district surveyor.

77. There shall be paid to the district surveyor, or to such other surveyor as aforesaid, in respect of his services under the second part of this act, such fees, not exceeding the amounts specified in the second part of the second schedule hereto, as may from time to time be directed by the said Metropolitan Board.

Metropolitan Board may appoint special fees for services not provided for.

78. If any special service is required to be performed by the district surveyor, or by such other surveyor as aforesaid, under the second part of this act, for which no fee is specified in the said schedule, the said Metropolitan Board may order such fee to be paid for such service as they think fit (*s*).

Fees to be deemed part of expenses

79. All fees paid to the district surveyor, or to such other surveyor as aforesaid, by virtue of the second part of this act, shall be deemed to be expenses incurred by the said commissioners in the matter of the dangerous structure in respect of which such fees are paid, and shall be recoverable by them from the owner accordingly (*t*).

Justice of peace may cause inmates to be removed from dangerous structures

80. In cases where a structure has been certified by a district surveyor, or such other surveyor as aforesaid, to be dangerous to its inmates, a justice of the peace may, if satisfied of the correctness of such certificate,

(*s*) Some special fees are occasionally payable, as to which information may be obtained at the offices of the Board.

(*t*) Under sects. 73 and 74.

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upon the application of the said commissioners, by order under his hand direct any inmates of such structure to be removed therefrom by a constable or any other peace officer, and if they have no other abode he may require them to be received into the workhouse established for the reception of the poor of the place in which such structure is situate (*u*).

Powers of commissioners to appoint officers.

81. [Subject to the approval of one of her Majesty's principal secretaries of state (*x*),] the said commissioners may appoint such persons at such salaries, and make such regulations as they think fit for carrying into execution the second part of this act; [*and all expenses incurred by them* (*y*) *not hereby otherwise provided for shall, in the case of expenses incurred by the said Commissioners of Police, be deemed to be expenses incurred by them in respect of the police force of which they are commissioners, and be payable accordingly* (*z*); *and all expenses incurred by the said Commissioners of*

(*u*) Subject, of course, to their settlement or respective settlements.

(*x*) Repealed by Metropolitan Building Act, 1869, *post.*

(*y*) *I.e.* by the commissioners.

(*z*) The Board of Works are now substituted for the Commissioners of Police, and their expenses are to be paid for in the same manner as other expenses under the act. See the Metropolitan Building Act, 1869 (32 & 33 Vict. c. 82), in Appendix, and ss. 67 & 68 of the principal act.

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Sewers shall be paid out of the said (*a*) *consolidated rate* (*b*) (*c*).]

(*a*) Sect. 75.
(*b*) See also as to expenses, s. 68, *ante*.
(*c*) The Metropolitan Board supplies the forms required by district surveyors under this part of the act.

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PART III.

PARTY STRUCTURES (*a*).

PRELIMINARY.

Definition of building owner and adjoining owner.

82. In the construction of the following provisions relating to party structures, such

(*a*) "Party Structures" and "Party Walls" are defined for the purposes of the act by sect. 3, *ante*.

As a general rule, it may be said that property in party structures follows the land on which it is built; so that a joint tenancy, or tenancy in common of the land, will give a similar interest in the party structure; and the right of property is not altered by the mere fact of the two owners of adjoining land sharing the expense of erecting the party structure. See *Matts* v. *Hawkins*, 5 Taunt. 20; *Hutchinson* v. *Mains*, 1 Alcock & Napier's Irish Rep. 155; and it is a matter of evidence what the nature of the tenure is, although common user of a wall is *primâ facie* evidence that there is a tenancy in common of the wall and the soil on which it stands, *Cubitt* v. *Porter*, 8 B. & C. 257; *Wiltshire* v. *Sidford*, 1 Man. & Ry. 404. See also *Murley* v. *M'Dermott*, 8 Ad. & El. 138, 3 Nev. & Per. 356. The duty of repairing a party wall will therefore fall upon the person in whom is the property in the wall. See *Tenant* v. *Golding*, 1 Salk. 21, 2 Ld. Raym. 1089.

The remedy of a person who is owner of a party wall which has been interfered with not according to the rules of the act, may probably be either to abate any erection made or to sue in trespass; but it will be a good defence to allege that the statute has been

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one of the owners of the premises separated by or adjoining to any party structure as is desirous of executing any work in respect to such party structure shall be called the building owner, and the owner of the other premises shall be called the adjoining owner (*b*).

RIGHTS OF BUILDING AND ADJOINING OWNERS.

83. The building owner shall have the Rights of building owner (*c*).

followed, and that may be raised under the general issue by statute. See note to sect. 108.

It seems at one time to have been thought, that, under the earlier act of 12 Geo. III. c. 73, any person erecting a wall which might serve in the future as a party wall, if a house were built against it, might build such wall partly on his own ground and partly on that of his neighbour; but it was decided otherwise in *Barlow* v. *Norman*, 2 Wm. Bl. 959, "for no man has a right to presume that his neighbour will hereafter build a house adjoining to his, and erect half his outside wall on his neighbour's ground, in consequence of such presumption."

See Woolrych on Party Walls and Fences.

It is too late for an owner to call in aid the provisions of this act after verdict found, and indeed after an express promise to pay for part of a structure, although it be not erected in strict conformity with the act, unless that has been made an express condition of the promise to pay (*Stuart* v. *Smith*, 7 Taunt. 158; 2 Marsh. 435).

(*b*) There seems to be no reason why these owners should not be occupiers or tenants for years as well as absolute owners (see sect. 3).

(*c*) See *Wheeler* v. *Gray*, *post*, note to sect. 85.

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PART III. *Party Structures.*

following rights in relation to party structures (*d*); that is to say,

(1.) A right to make good or repair any party structure that is defective or out of repair (*e*):

(2.) A right to pull down and rebuild any party structure that is so far defective or out of repair as to make it necessary or desirable to pull down the same (*f*):

(3.) A right to pull down any timber or other partition that divides any buildings, and is not conformable with the regulations of this act, and to build instead a party wall conformable thereto (*g*):

(4.) In the case of buildings having rooms or stories, the property of different owners intermixed, a right to pull down such of the said rooms or stories or any part thereof as are not built in conformity with this act, and to rebuild the same in conformity with this act (*h*):

(*d*) Three months' notice being first given. Sect. 85.

(*e*) As to the expenses, see sect. 88 (No. 1).

(*f*) As to the expenses, see sect. 88 (No. 2).

(*g*) See sects. 11, 14, 15. As to the expenses, see sect. 88 (No. 3). See the qualifications of this enactment at the end of this section, and note thereto.

(*h*) As to the expenses, see sect. 88 (No. 4).

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(5.) (*i*) In the case of buildings connected by arches or communications over (*k*) public ways or over passages belonging to other persons, a right to pull down such of the said buildings, arches or communications, or any part thereof, as are not built in conformity with this act, and to rebuild the same in conformity with this act:

(6.) A right to raise any party structure permitted by this act to be raised (*l*),

(*i*) Refer to sect. 24. As to the expenses, see sect. 88 (No. 5). See the end of this section.

(*k*) Not under. See sect. 25.

(*l*) There is nothing, however, in the clause to take away the common law right of any individual to bring an action against the building owner, if such owner should invade any existing right. As, for instance, if the builder should raise a wall and thereby obstruct an ancient window. It is true that the surveyor will be careful not to allow the introduction of fresh windows in party walls where none already exist, but unless a party should be willing to surrender his right, whatever it may be, it must not be encroached upon, unless, indeed, the enjoyment of it were to be in violation of the express provisions of the act.

The following case seems to apply to *old windows*, and, although decided under the late act, would probably be an authority should a similar dispute arise. The plaintiff and defendant had land contiguous to each other. Until 1803, a wall of brick and mortar standing wholly on the plaintiff's land divided the properties. Thirty-four years before the action, the plaintiff had erected a workshop for the purposes of his trade which required a full light, and the windows fronted the defendant's land. After some time the wall was condemned by the surveyor as ruinous,

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PART III. *Party Structures.*

or any external wall (*m*) built against such party structure, upon condition

and a party wall was erected by the plaintiff in lieu of it, half on the land of the plaintiff, and half on that of the defendant, and at their joint expense. The plaintiff, upon his half of the wall, made another frame containing windows similar to those he had before. Whilst the old wall stood, the defendant had used it by erecting against it on his land a shed which did not rise higher than the wall. But now he carried up an additional height of perpendicular wall upon his half of the new party wall, and built up his shed to the same height, so as to obstruct the plaintiff's windows, and render the place unfit for the plaintiff's trade. Upon this, the plaintiff brought his action on the case, and had a verdict, subject to the question whether the windows in the plaintiff's house were not a nuisance, being inserted in the party walls, and so prohibited by the Building Act (*i.e.* 14 Geo. 3, c. 78). It was contended for the defendant; first, that the Building Act forbade all lateral lights; and secondly, that the plaintiff had deserted his ancient rights by erecting the new frame-work; that he was bound, in fact, to raise no edifice but such as, in a new site, would be conformable to the act. For the plaintiff it was said, that as no conviction had taken place within three months under section 60, the building, that is to say, the new frame-work in which the windows were inserted, could not be called a nuisance. The defendant might have carried up his wall if the plaintiff had not previously enjoyed lights, but the maxim, *sic utere tuo ut alienum non lædas*, would be applicable upon this occasion. Sections 14, 26, 27, 42, 43, 60, 62, and 63, were cited on either side. The Court gave judgment for the plaintiff. The question as to the plaintiff's right to raise the wall in the manner he had done by erecting the frame-work would not arise in the present case. The action was one for obstructing lights,

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(*m*) See *Barlow* v. *Norman*, 2 Sir Wm. Bl. 959. See sect. 3, note (*d*), and sect. 16.

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of making good all damage occasioned thereby to the adjoining premises or

and if the defendant could succeed in doing that with impunity, he might, by the same rule, pull down the house and avoid an action. To be sure, the argument for the plaintiff that the building had become legal, because no conviction had taken place within three months, was of no avail; for the 65th section, which orders the demolition or amendment of walls, contains no limitation as to time. But here the defendant had mistaken his mode of proceeding, and the rule, therefore, for setting aside the verdict was discharged (*Titterton* v. *Conyers*, 5 Taunt. 465). So again, in another case, it appeared that the defendant had raised a party fence wall which divided the premises of the plaintiff and defendant, and had built a workshop and a stable up to and upon the wall so raised, which had the effect of darkening the plaintiff's windows. An action on the case having been brought, the defendant insisted that he was protected under the Building Act, 14 Geo. 3, c. 78, because a period of six months had elapsed since the time of the act committed. He further insisted that as the building was partly on the plaintiff's land, the action should have been trespass and not case. The first objection was overruled, and it was left to the jury to say whether the plaintiff's enjoyment of light and air was diminished to a greater degree than it would have been if the building had been erected on the defendant's moiety of the wall only. The jury found in the negative; but they found that there had been such a diminution of light and air as made the plaintiff's premises less fit for occupation (7 C. & P. 412); and a verdict was taken for the plaintiff, with liberty to move to enter a nonsuit. And the Court held, that the case was not within the Building Act. A collateral injury, an eventual damage, was not within its purview. So, although the act might enable a party to build against the wall of his neighbour under some circumstances, it did not secure him against an excess of the privilege, and, therefore, trespass, probably, would lie. But as the plaintiff could not have received compensation upon this occa-

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PART III. *Party Structures.*

to the internal finishings and decorations thereof, and of carrying up to the requisite height all flues and chimney stacks (*n*) belonging to the adjoining owner on or against any such part structure or external wall (*o*).

(7.) A right to pull down any party structure (*p*) that is of insufficient strength for any building intended to be built, and to rebuild the same of sufficient strength for the above purpose, upon condition of making good all damage occasioned thereby to the adjoining premises, or to the internal finishings and decorations thereof (*q*):

sion in trespass, it was natural that he should resort to an action upon the case, and that was the proper remedy. The rule for leave to enter a nonsuit was discharged. (*Wells* v. *Ody*, 1 Mees. & Wels. 452; *S. P.* at N. Prius, 7 C. & P. 410). The principle of these decisions has been further confirmed in reference to the present act by *Crofts* v. *Haldane*, L. R. 2 Q. B. 194; 8 B. & S. 194; 36 L. J. Q. B. 85, where it was held that this does not authorise the raising of a structure so as to obstruct ancient lights in the adjoining premises. In such a case, there being no right conferred by the act, there is no question for the decision of an arbitrator under s. 85 (7), but the remedy is by action (*Ibid.*). See also p. 45, note (*s*).

(*n*) See sect. 20, et seq. *Wells* v. *Ody*, 7 C. & P. 22. The building owner must raise the chimneys if it be necessary.

(*o*) See sect. 17. As to the expenses, see sect. 88 (No. 6).

(*p*) See *Standard Bank, &c.* v. *Stokes*, 9 Ch. D. 68.

(*q*) See sect. 88 (No. 7), as to the expenses.

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(8.) A right to cut into any party structure upon condition of making good all damage occasioned to the adjoining premises by such operation (*r*):

(9.) (*s*) A right to cut away any footing (*t*), any chimney breasts, jambs (*t*), or flues projecting from any party wall, in order to erect an external wall against such party wall, or for any other purpose, upon condition of making good all damage occasioned to the adjoining premises by such operation:

(10.) A right to cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of such wall or building overhanging the ground of the building owner, in order to erect an upright wall against the same, on condition of making good any damage sustained by the wall or building by reason of such cutting away or taking down:

(11.) A right to perform any other necessary works incident to the connexion of * party structure with the premises adjoining thereto:

* Sic.

(*r*) As to the expenses, see sect. 88 (No. 8).

(*s*) See sect. 20, as to chimneys and flues; and as to the expenses, see sect. 88 (No. 9).

(*t*) For the meaning of these terms, see notes to ss. 8, 20.

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PART III. *Dangerous Structures.*

But the above rights shall be subject to this qualification, that any building which has been erected previously to the time of this act coming into operation shall be deemed to be conformable with the provisions of this act (*u*) if it is comformable with the provisions of an act passed in the fourteenth year of his late Majesty King George the Third, chapter seventy-eight, or with the provisions of the said act of the eighth year of her present Majesty, chapter eighty-four (*x*).

Rights of adjoining owner.

84. Whenever the building owner proposes to exercise any of the foregoing rights with respect to party structures the adjoining owner may require the building owner to build on any such party structure certain chimney jambs (*y*), breasts, or flues, or certain piers or recesses (*z*), or any other like

(*u*) Therefore where it is said above in this section (Nos. 3, 4 & 5), that erections not in conformity with this act may be meddled with, it must first be ascertained that such erections are not permitted by 14 Geo. 3, c. 78, and 7 & 8 Vict. c. 84. For if they are, they must be left untouched. The power of making improvements under No. 6, &c., may be exercised upon all buildings, with the understanding that the building owner must make good all damages at his own cost. This must be read as referring to old buildings, within the meaning as defined in s. 8. See note (*s*), p. 45.

(*x*) Those acts, although for the most part repealed, must be taken to survive for this purpose.

(*y*) See sect. 20, chimneys and flues.

(*z*) Sect. 13, recesses.

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works for the convenience of such adjoining owner; and it shall be the duty of the building owner to comply with such requisition in all cases where the execution of the required work will not be injurious to the building owner, or cause to him unnecessary inconvenience or unnecessary delay in the exercise of his right; and any difference that arises between any building owner and adjoining owner in respect of the execution of such works (*a*) as aforesaid shall be determined in manner in which differences between building owners and adjoining owners are hereinafter directed to be determined (*b*).

Rules as to exercise of rights by building and adjoining owners.

85. The following rules shall be observed with respect to the exercise by building owners and adjoining owners of their respective rights:—

(1.) No building owner shall, except with consent of the adjoining owner, or in cases where any party structure is dangerous, in which cases the provisions hereby made as to dangerous structures shall apply, exercise any right hereby given in respect of any

(*a*) Whether with reference to the works themselves or the costs of them. The expense of works done at the requisition of the adjoining owner are due from the adjoining to the building owner, and may be recoverable as a debt. Sect. 94.

(*b*) Sect. 85, *infra* (No. 6, &c.).

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party structure, unless he has given at the least three months previous notice to the adjoining owner by delivering the same to him personally, or by sending it by post in a registered letter addressed to such owner at his last known place of abode (*c*) :

(2.) The notice so given shall be in writing or printed (*d*), and shall state the nature of the proposed work, and the time at which such work is proposed to be commenced :

(3.) No building owner shall exercise any right hereby given to him in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner (*e*) :

(*c*) No notice is required to justify a person in pulling down a party wall between premises belonging to him, and other premises also belonging to him, but let to a tenant from year to year, or a less term, or a tenant at will, as such tenant is not an owner within the definition in s. 3 (*Wheeler* v. *Gray*, 4 C. B. N. S. 544 ; 6 C. B. N. S. 606 ; 27 L. J. C. P. 267 ; 28 L. J. C. P. 200).

No notice is required, before removing a building, if the party wall is in no way disturbed (*Major* v. *The Park Lane Co.*, L. R. 2 Eq. 45 ; 14 L. T. N. S. 543).

(*d*) This word contemplates a frequent user of such notices. The Board issue forms which may be used under this part of the act in accordance with their powers under s. 59 ; see note (*k*) to that section. See the forms in Appendix.

(*e*) This does not impose upon an owner pulling down a building and party wall any duty to protect

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(4.) Upon the receipt of such notice (*f*) the adjoining owner may require the building owner to build or may himself build on any such party structure any works to the construction of which he is hereinbefore mentioned to be entitled (*g*):

by hoarding or otherwise the rooms exposed by such pulling down (*Thompson* v. *Hill*, L. R. 5 C. P. 564; 39 L. J. C. P. 264. See too, *Chadwick* v. *Trower*, 6 Bing. M. C. 1; 8 S. C. 1). The building owner, however, was under the act of Geo. III. bound to replace such ornamental decorations as he removed (see *Reg.* v. *Ponsford*, 1 Dowl. & Lound., 116; 12 L. J. Q. B. 313). But under the present act the building owner is not bound to pay for damage necessarily done to the premises of the adjoining owner (*Bryer* v. *Willis*, 19 W. R. 102; 22 L. T. N. S. 365). The remedy of the adjoining owner, if any, would be by action and not by mandamus (*Reg.* v. *Ponsford*, *supra*).

(*f*) This will be a matter for consideration when a difference arises. See No. 6, &c.

(*g*) That is to say, the adjoining owner may himself execute the works mentioned in sect. 84. It can hardly be said that he is entitled to build any works of which the building owner is especially declared to be the author. But he is absolutely entitled under sect. 84; and, therefore, although the section might have been more explicit, it seems sufficiently plain to afford the explanation here suggested. Nevertheless, it might be said, that in all cases where the property of the adjoining owner would be interfered with, he might exercise a right of performing the work as far as his own part of the premises should extend. But this does not seem to be within the provision of the statute. The adjoining owner, however, it would appear, ought not to be liable under s. 88 for the costs of works done merely for the special convenience of the building owner; as by s. 93 the adjoining owner is bound to pay the cost of work done on his requisition.

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(5.) Any requisition so made by an adjoining owner shall be in writing or printed, and shall be delivered personally to the building owner within one month after the date of the notice being given by him, or be sent by post in a registered letter addressed to him at his last known place of residence: It shall specify the works required by the adjoining owner for his convenience, and shall, if necessary, be accompanied with explanatory plans and drawings:

(6.) If either owner does not, within fourteen days after the delivery to him of any notice or requisition, express his consent thereto, he shall be considered as having dissented therefrom, and thereupon a difference shall be deemed to have arisen between the building owner and adjoining owner (*h*):

(7.) In all cases not hereby specially provided for where a difference arises (*i*) between a building owner and adjoining owner in respect of any matter arising under this act, unless both

(*h*) See sect. 90.

(*i*) This will not include a claim for damages for obstructing ancient lights, or for any other act which cannot be done in pursuance of any power given by the act (*Crofts* v. *Haldane*, L. R. 2 Q. B. 194; 8 B. & S. 194; 36 L. J. Q. B. 85, see note (*l*), page 81.

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parties concur in the appointment of one surveyor they shall each appoint a surveyor, and the two surveyors so appointed shall select a third surveyor, and such one surveyor or three surveyors, or any two of them, shall settle any matter in dispute between such building and adjoining owner, with power by his or their award to determine the right to do and the time and manner of doing any work, and generally any other matter arising out of or incidental to such difference (*k*): but any time so appointed for doing any work shall not commence until after the expiration of such period of three months, as is hereinbefore mentioned:

(8.) Any award given by such one surveyor, or by such three surveyors, or any two of them, shall be conclusive, and shall not be questioned in any court, with this exception, that either of the parties to the difference may appeal therefrom to the county court within fourteen days from the date of the delivery of any such award as aforesaid, and such county court

(*k*) For appointment of umpire under "The Common Law Procedure Act, 1854," see *McBryde, Ex parte*, 4 Ch. D. 200; 46 L. J. Ch. 153.

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may, subject as hereinafter mentioned, rescind or modify the award so given in such manner as it thinks just:

(9.) If either party to the difference makes default in appointing a surveyor for ten days after notice has been given to him by the other party in manner aforesaid to make such appointment, the party giving the notice may make the appointment in the place of the party so making default:

(10.) The costs incurred in obtaining any such award as aforesaid shall be paid by such party as such one surveyor, or three surveyors, or any two of them, may determine:

(11.) If the appellant from any such award as aforesaid, on appearing before the county court, declares his unwillingness to have the matter decided by such court, and proves to the satisfaction of the judge of such court that in the event of the matter being decided against him he will be liable to pay a sum, exclusive of costs, exceeding fifty pounds, and gives security, to be approved by such judge, duly to prosecute his appeal and to abide the event thereof, all proceedings in the county court shall thereupon be stayed; and it shall be lawful for

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such appellant to bring an action in one of her Majesty's superior courts of law at Westminster (*l*) against the other party to the difference; and the plaintiff in such action shall deliver to the defendants an issue or issues (*m*) whereby the matters in difference between them may be tried; and the form of such issue or issues, in case of dispute, or in case of the non-appearance of the defendant, shall be settled by the court in which the action is brought; and such action shall be prosecuted and issue or issues tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such court, or as near thereto as circumstances admit (*n*).

(12.) If the parties to any such action agree as to the facts, a special case may be stated for the opinion of any such superior court as aforesaid, and any case so stated may be brought before the court in like manner and subject to the same incidents in and

(*l*) Now the High Court of Justice.

(*m*) Formerly known by the term "feigned issue."

(*n*) See now Rules of Supreme Court, Ord. XXVI.

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subject to which other special cases are brought before such court, or as near thereto as circumstances admit; and any costs that may have been incurred in the county court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

Power for building owner to make entry on premises to effect works (*o*). Penalty on persons obstructing.

86. Whenever any building owner has become entitled, in pursuance of this act, to execute any work, it shall be lawful for him, his servants, agents or workmen, at all usual times of working, to enter on any premises for the purpose of executing and to execute such work, removing any furniture, or doing any other thing that may be necessary, and if such premises are closed he or they may, accompanied by a constable or other officer of the peace, break open any doors in order to such entry; and any owner or other person that hinders or obstructs any workman employed for any of the purposes aforesaid, or wilfully damages or injures the said work, shall incur for every such offence a penalty not exceeding ten pounds, to be recovered before a justice of the peace (*p*).

Security to be given by building

87. Any adjoining owner may, if he thinks fit, by notice in writing given by himself or

(*o*) *Wheeler* v. *Gray*, *ante*, note to sect. 85.
(*p*) Sect. 103, and 11 & 12 Vict. c. 43.

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his agent, require the building owner, before commencing any work which he may be authorized by this act to execute, to give such security as may be agreed upon, or in case of difference may be settled by the judge of the county court (*q*), for the payment of all such costs and compensation in respect of such work as may be payable by such building owner (*r*).

owner, if required by adjoining owner.

88. The following rules shall be observed as to expenses in respect of any party structure; (that is to say),

Rules as to expenses in respect of party structure.

As to expenses to be borne jointly by the building owner and adjoining owner: (*s*)

(1.) If any party structure is defective or out of repair the expense of making good or repairing the same shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use

(*q*) The county court judge for this purpose is only an arbitrator to settle the amount of the security, and does not act in his judicial capacity. Compare the case of the jurisdiction of county court judges as referees only (apart from the jurisdiction of their courts) in salvage cases (*Beadnell* v. *Beeson*, L. R. 3 Q. B. 443; 37 L. J. Q. B. 171).

(*r*) See sect. 101, and p. 88, note (*d*).

(*s*) Refer to ss. 97 and 3. These "expenses" must be read as exclusive of those incurred by a building owner solely on the requisition of the adjoining owner under sect. 84, as those are specially provided for by sect. 93.

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that each owner makes of such structure (*t*):

(2.) If any party structure is pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull down the same, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of each structure (*u*):

(3.) If any timber or other partition dividing any building is pulled down in exercise of the right hereinbefore vested in a building owner (*x*), and a party structure built instead thereof, the expense of building such party structure, and also of building any additional party structures that may be required by reason of such partition having been pulled down, shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such party

(*t*) See sect. 83 (No. 1).
(*u*) Sect. 83 (No. 2).
(*x*) Sect. 83 (No. 3).

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structure, and to the thickness required to * the respective buildings parted thereby (*y*):

(4.) If any rooms or stories, or any part of rooms or stories, the property of different owners, and intermixed in any building, are pulled down in pursuance of the right hereinbefore vested in any building owner (*z*), and rebuilt in conformity with this act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such rooms or stories:

(5.) If any arches or communications, or any parts thereof, are pulled down in pursuance of the right hereinbefore vested in any building owner (*a*), and rebuilt in conformity with this act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such arches or communications:

* Sic.

(*y*) For the adjoining houses may not be of the same magnitude.

(*z*) Sect 83 (No. 4). (*a*) Sect. 83 (No. 5).

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As to expenses to be borne by building owner:

(6.) If any party structure or external wall built against the same is raised in pursuance of the power hereinbefore vested in any building owner (*b*), the expense of raising the same, and of making good all such damage, and of carrying up to the requisite height all such flues and chimneys as are hereinbefore required to be made good and carried up, shall be borne by the building owner:

(7.) If any party structure which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull down the same, is pulled down and rebuilt by the building owner, the expense of pulling down and rebuilding the same, and of making good all such damage as is hereinbefore required to be made good, shall be borne by the building owner (*c*):

(8.) If any party structure is cut into by the building owner, the expense of cutting into the same, and of making

(*b*) Sect. 83 (No. 6).
(*c*) Sect. 83 (No. 7).

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good any damage hereinbefore required to be made good, shall be borne by such building owner (*d*):

(9.) If any footing (*f*), chimney breast jambs (*g*) or floor is cut away in pursuance of the powers hereinbefore vested in any building owner (*h*), the expense of such cutting away, and of making good any damage hereinbefore required to be make good, shall be borne by the building owner (*i*):

Account of expenses of works to be delivered to adjoining owner within one month

89. Within one month after the completion of any work which any building owner is by this act authorised or required to execute, and the expense of which is in whole or in part to be borne by an adjoining owner, such building owner shall deliver to the adjoining owner an account (*k*) in writ-

(*d*) Sect. 83 (No. 8).
(*f*) See note to s. 8.
(*g*) See note to s. 20.
(*h*) Sect. 83 (No. 9).
(*i*) Refer to sect. 84, and sect. 85 (No. 4), where it will be seen that the adjoining owner may demand to do certain works by his own workmen.
(*k*) Under the old law, if the requisites of the statute were complied with in an ordinary sense, it was deemed sufficient. The Court would not put words into the Act of Parliament (which it did not contain) for the purpose of construing it to be a penal law. In an action brought under the 14 Geo. 3, c. 78, for contribution, it appeared that there was an account of the brickwork, of the deduction for materials, and of the other expenses, and payment

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ing of the expense of the work, specifying any deduction to which such adjoining owner

was demanded within the twenty-one days. But when the account came to be examined it was found that the prices actually paid for the brickwork, and received for the materials, exceeded the rates prescribed by the act, making the whole amount 30*l.* instead of 18*l.*, the sum which would have been due had the statutable duty been charged. It was contended, first, that this could not be a true account, because of the high price demanded, and then, as the demand would necessarily refer to the account delivered, that there could not have been a good demand. Lord Tenterden, however, observed, that the requisites of the statute had been apparently adopted. The act itself fixed the price, and if the quantities were correctly stated, the party charged would have the means of knowing the amount of the claim against him. "There is, therefore," said his lordship, "no necessity for, and the act does not require, any specification of the price; and the account will not be vitiated by the unnecessary insertion of a price which the party cannot be charged with." The Chief Justice added, that with respect to the demand, a demand to pay the account is, in effect, a demand to pay the sum authorised by the statute. Nor need the demand be in terms a demand for the exact sum; for in the same section which empowers the plaintiff to proceed at law, the plaintiff is enabled to recover double costs, if he recover the full sum specified. (*Rarding* v. *Barnard*, Moo. & M. 71; see, however, *Philp* v. *Donati*, 2 Taunt. 62.)

It may be remarked likewise in this place that, although the course by summary proceeding may appear at first sight to withdraw these various cases from consideration, they are yet of some value. First, inasmuch as the police magistrates and justices would feel themselves bound to pay a certain amount of attention to the ancient decisions of the Courts. And, secondly, because if the present tribunal were to act in opposition to the principle of authorities which might be now applicable, an action might well lie, on the one hand, for an illegal distress and im-

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or other person may be entitled in respect of old materials or in other respects; and every such work as aforesaid shall be estimated and valued at fair average rate and prices, according to the nature of the work and the locality, and the market price of materials and labour at the time.

Adjoining owner may appeal against account.

90. At any time within one month after the delivery of such account, the adjoining owner, if dissatisfied therewith, may declare his dissatisfaction to the party delivering the same, by notice in writing given by himself or his agent, and specifying his objections thereto; and upon such notice having been given a difference shall be deemed to have arisen between the parties, and such difference shall be determined in manner hereinbefore provided for the determination of differences between building and adjoining owners (*l*).

Building owner may recover, if no appeal made.

91. If within such period of one month as aforesaid the party receiving such account does not declare in manner aforesaid his dissatisfaction therewith, he shall be deemed to have accepted the same, and shall pay the

prisonment, or a mandamus on the other for refusing to do an act apparently in conformity with the present statute and the old cases.

(*l*) See sect. 85 (No. 6), *et seq.* It may be prudent for parties to agree under the majority of circumstances. See the observation of Gibbs, C. J., under the old law, *Stuart* v. *Smith*, 2 Marsh, 435, 436; *S. C.*, 7 Taunt. 158.

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same, on demand, to the party delivering the account, and if he fails to do so the amount so due may be recovered as a debt.

Penalty on delay of payment by adjoining owner.

92. Where the adjoining owner is liable to contribute to the expenses of building any party structure, until such contribution is paid the building owner at whose expense the same was built shall stand possessed of the sole property in such structure (*m*).

As to expenses incurred on requisition of adjoining owner.

93. Where any building owner has incurred any expenses on the requisition of an adjoining owner, the adjoining owner making such requisition shall be liable for all such expenses, and, in default of payment the same may be recovered from him as a debt (*n*).

Penalty on building

94. Where any building owner is, by the

(*m*) Not of the house but of the party structure. This provision is in aid of the building owner, for the title to the premises is involved in the discharge of the debt, and the power of the adjoining owner to do any works on the party structure thus incumbered is taken away for the time. It must be noticed however, that the additional words in the former act "and of the ground whereon it stands," are here omitted.

(*n*) See instances of such requisition, sect. 84.

This clause is in its terms general, and may, therefore, be held to embrace any works done upon such a requisition. But in case of work done by the building owner on the requisition of the adjoining owner, which he is not by the act bound to do on such requisition, a debt would arise at common law for work done or money paid at the request of the adjoining owner, and the cost could be recovered apart from this section. See also s. 97 (No. 6).

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third part of this act, liable to make good any damage he may occasion to the property of the adjoining owner by any works authorised to be executed by him, or to do any other thing upon condition of doing which his right to execute such works is hereby limited to arise (*o*), and such building owner fails within a reasonable time to make good such damage or to do such thing, he shall incur a penalty, to be recovered before a justice of the peace, not exceeding twenty pounds for each day during which such failure continues (*p*).

owner failing to execute required works.

95. Where, in pursuance of this act, any consent is required to be given (*q*), any notice to be served, or any other thing to be done by, on or to any owner under disability, such consent may be given, such notice may be served, and such thing may be done by, on or to the following persons, on behalf of such persons under disability; (that is to say),

Consent how given on behalf of persons under disability.

By, on or to a husband, on behalf of his wife:

(*o*) Sect. 83.

(*p*) Sect. 103, and 11 & 12 Vict. c. 43. It will, of course, be prudent to give notice to the building owner of the nature and amount of the damage done, together with an estimate of the expense. But, nevertheless, the acts and powers being voluntary on the part of the builder, he would seem not to be entitled to notice in respect of his own wrong.

(*q*) See sect. 85 (Nos. 1 and 6), &c.

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By, on or to a trustee, on behalf of his cestui que trust:

By, on or to a guardian or committee, on behalf of an infant, idiot, or lunatic (*r*).

Consent how given on behalf of persons not to be found.

96. Where any consent is required to be given or any other thing to be done by any owner in pursuance of this act, if there is no owner capable of giving such consent or of doing such thing, and no person empowered by this act to give such consent or to do such thing on behalf of such owner, or if any owner so capable, or any person so empowered, cannot be found, the judge of the county court (*s*) shall have power to give such consent or do or cause to be done such thing on behalf of such owner, upon such terms and subject to such conditions as he may think fit, having regard alike to the nature and purpose of the subject matter in respect of which such consent is to be given, and to the fair claims of the parties on whose behalf such consent is to be given;

(*r*) Trustees, under the Judicature Acts, may sue and be sued on behalf of their cestuis que trustent. Infants and married women may sue by their next friend. Infants may defend by their guardian; and on certain terms married women may defend in person. See Rules of the Supreme Court, Ord. XVI., rr. 7, 8.

(*s*) That is of the district in which the building as to which any question arises is situated. This would seem to be a power given to the County Court judge as an individual, not to his Court. See s. 87, and note thereto, p. 95, *ante*.

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and such judge shall have power to dispense with the service of any notice which would otherwise be required to be served (*t*).

(*t*) See *Collins* v. *Wilson*, 4 Bing. 551. There are, however, of course very many party walls which are not within the jurisdiction of the 18 & 19 Vict. c. 122. That act is limited within certain boundaries (sect. 6), so that buildings and walls situate without those boundaries must be referred to the common law. See the note to the title of this part of the act, and see Woolrych on Party Walls and Fences.

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PART IV.

MISCELLANEOUS PROVISIONS.

Payment of expenses by owners.

97. Where it is hereby declared that expenses are to be borne by the owner of any premises (*a*) (including in the term "owner" the adjoining and building owner respectively), the following rules shall be observed with respect to the payment of such expenses:

(1.) The owner immediately entitled in possession to such premises (*b*), or the occupier thereof (*c*), shall in the

(*a*) Sects. 73, 88 (No. 1), *et seq.*; sect. 93.

(*b*) See *Ex parte the Overseers of Saffron Hill*, 24 L. J. M. C. 56.

(*c*) The words owner and occupier are often productive of confusion and require at all times to be carefully dealt with. The meaning of this act, with reference to these terms, seems, however, to be sufficiently obvious. Under the old law a tenant at rack rent was not liable to contribution. (*Southall* v. *Leadbetter*, 3 T. R. 458; *Stone* v. *Greenwell*, there cited, p. 461; *Beardmore* v. *Fox*, 8 T. R. 214). Neither was a tenant liable who had much improved his premises, and thus became possessed of a beneficial interest (*Lambe* v. *Hemans*, 2 B. & Ald. 467); but, latterly such an occupier has not been discharged; and herein the present statute follows the 7 & 8 Vict. c. 84, s. 49, which it supersedes.

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first instance pay such expenses, with this limitation, that no occu-

Certainly, if there be an independent agreement between landlord and tenant, that would stand upon a different foundation. Indeed in the case of dangerous structures, there is an especial provision (sect. 73) to protect the right of the lessor. The owner, being in possession, must pay these expenses, in the first instance.

The owner of the improved rent, being in possession, must do the same and charge his next landlord with contribution. The owner of a beneficial lease will stand in the same position. The occupier under a lease for years is an "occupier" within the clause, although he is also an owner under the interpretation clause (sect. 3). He must pay upon default of the owner, and must look for indemnity (if any) from his landlord; and under sect. 97 (No. 5), he may deduct the amount from his rent. The occupier, however, shall not pay more than the rent due or to become due thereafter in respect of the premises. Whether that rent is at once to be calculated, so as to pay off the debt in full, or to be redeemed, so as to pay the debt by instalments, is not particularly specified. The same rules apply to the occupier from year to year, or at will.

This clause would seem to invite landlords to introduce covenants into their leases for their tenants to pay all expenses attending the execution of the Building Act. The 111th section, moreover, expressly saves all liabilities as between landlord and tenant. (See *Barrett* v. *The Duke of Bedford*, 8 T. R. 602).

An ordinary covenant to repair will probably not include a liability to pay the expenses of party walls under the act. (See *Moore* v. *Clark*, 5 Taunt. 90.) But it will do so if party walls are expressly mentioned. (*Barrett* v. *Duke of Bedford*, 8 T. R. 602.) Or if there be a covenant to pay as rent a certain sum in net money without deduction, that will make the tenant liable for the cost of repairs to party walls. (*Ibid.*)

To enable a person to claim contribution under

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pier shall be liable to pay any sum exceeding in amount the rent due, or that will thereafter accrue due from him in respect of such premises during the period of his occupancy:

(2.) If there are more owners than one every owner shall be liable to contribute to such expenses in proportion to his interest:

(3.) If any difference arises as to the amount of contribution such difference shall be decided by arbitration, to be conducted in manner directed by the Companies Clauses Consoli-

this section, he must not act independently of the statute and *do* voluntarily work which the statute does not cast upon him, but only obliges him to *pay others for*. There must be legal compulsion to enable him to recover over any sums paid. (See *Robinson* v. *Lewis*, 10 East. 227; *Pizey* v. *Rogers*, Ry. & M. 357; and *Bryer* v. *Willis*, 19 W. R. 102; 23 L. T. N. S. 365.)

There is not any pretence for saying that an executor or administrator is not liable. Under the old statute, an administrator who appeared to have no assets beyond the improved rent was held liable, and there is not any expression to exempt such a person in the present statute. (*Wilcox* v. *Newman*, 1 Chit. Rep. 132; *Thackor* v. *Wilson*, 3 Ad. & El. 142; 4 Nev. & M. 659; 1 Har. & Wol. 131. See, too, *Horridge* v. *Wilson*, 11 Ad. & El. 645).

The special mode of charging the owner of the improved rent has ceased with the repeal of the old law which gave the remedy. (See the old form, 3 Chit. on Pl., 123). As to which see *Moore* v. *Clark*, 5 Taunt. 90.

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dation Act, 1845; and for that purpose the clauses of the said act with respect to the settlement of disputes by arbitration shall be incorporated with this act (*d*):

(4.) If some of the owners liable to contribution cannot be found, the deficiency so arising shall be divided amongst the parties that can be found:

(5.) Any occupier of premises who has paid any expenses under this act may deduct the amount so paid from any rent payable by him to any owner of the same premises; and any owner of premises who has paid more than his due proportion of any expenses may deduct the amount so overpaid from any rent that may be payable by him to any other owner of the same premises (*e*):

(6.) If default is made by the owner or occupier in payment of any ex-

(*d*) 8 Vict. c. 16, sects. 128—134; see those sections in Appendix.

(*e*) This is permissive and not obligatory, and a tenant who has had to pay expenses which his landlord ought to have paid may sue for the amount in place of deducting it from his rent. (*Erle* v. *Maugham*, 14 C. B. N. S. 626; 11 W. R. 911; 8 L. T. N. S. 637).

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penses hereby made payable by him in the first instance, or if default is made by any owner in payment of any other expenses or monies due from him by way of contribution or otherwise in pursuance of this act, then in addition to any other remedies hereby provided such expenses and monies, if arising in respect of any matter within the provision of the third part of this act, may be recovered as a debt in due course of law, but if arising in respect of any other matter under this act (*f*), may be recovered in a summary manner (*g*).

Rules as to service of notices, summonses and orders.

98. The following rules shall be observed with respect to the giving or service of any notice, summons or order directed to be given or served under this act in cases not hereinbefore provided for:

(1.) A notice, summons or order, may in all cases be served personally:

(2.) A notice, summons or order may be served on any builder by leaving the same or sending it in a registered letter, addressed to him at

(*f*) Under Part II., for instance.
(*g*) Sect. 103, and 11 & 12 Vict. c. 43.

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his place of address as stated by him (*h*) to the district surveyor, or by putting up such notice, summons or order on a conspicuous part of the building or premises to which the same relates:

(3.) A notice, summons or order may be served on the owner or occupier of any premises by leaving the same with the occupier of such premises or with some inmate of his abode, or if there is no occupier, by putting up such notice, summons or order on a conspicuous part of the building or premises to which the same relates; and it shall not be necessary to name the owner or occupier of such premises; nevertheless, when the owner of any such premises and his residence, or that of his agent, are known to the party by whom or on whose behalf any notice, summons or order is intended to be served (*i*), it shall be the duty of such party to send every such notice, summons or order by the post in a registered letter addressed to the residence or

(*h*) See sect. 15 (No. 1).
(*i*) And when it is intended to *serve* the owner.

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last known residence of such owner or of his agent (*k*):

(4.) A notice, summons or order may be served on any district surveyor by leaving the same at his office.

As to things authorized to be done by a county court.

99. Whenever anything is hereby authorized to be done by a county court it may be done as follows; (that is to say,) if such thing arises in respect of any structure or other subject-matter situate within the city of London or the liberties thereof, by the sheriff's court established by a local act passed in the eleventh year of the reign of her Majesty, chapter seventy-one, intituled "An Act for the more easy Recovery of Small Debts and Demands within the City of London or the Liberties thereof," and if such thing arises in respect of any structure or other subject-matter situate elsewhere, by the county court having jurisdiction within the district in which such structure or other subject-matter is situate.

11 & 12 Vict. c. 71.

Manner of determining differences.

100. In cases where jurisdiction is hereby given to a county court, such court may from time to time make such order in respect of matters so brought before it as it

(*k*) This is probably in addition to and not in substitution for the notice put up on the premises.

Compare with this section Rules of Supreme Court, Ord. IX. r. 2, as to substituted service, and notes thereto in Lely and Foulkes on the Judicature Acts.

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may think fit, with power to settle the time and manner of executing any work, or of doing any other thing, and to put the parties to the case upon such terms as respects the execution of the work as it thinks fit: it shall also have power to award or refuse costs according to circumstances, and to settle the amount thereof.

Form of proceedings in county court.

101. Proceedings in any county court in respect of any matter arising under this act shall be conducted in the same manner as proceedings are conducted in any case within the ordinary jurisdiction of such court, or as near thereto as circumstances permit; and orders made by the judge of any such court may be enforced by execution, committal or otherwise, in a similar manner to that in which the orders of such court are ordinarily enforced.

Appeal from decision of county court.

102. If either party in any case over which jurisdiction is hereby given to a county court feels aggrieved with the decision of such court in respect of any point of law, or the admission or rejection of any evidence, he may appeal therefrom in the same manner and upon the same terms in and upon which he might have appealed from the decision of such court in any case within the ordinary jurisdiction of such court, or as near thereto as circumstances permit; but no such appeal shall be allowed

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unless the value of the matter in difference between the parties exceeds fifty pounds (*l*); and the opinion of the judge before whom the case is tried as to such value shall be conclusive.

Recovery of penalties.

103. All penalties under this act (*m*), and all fees, monies, costs or expenses by this act directed to be recovered in a summary manner, may be recovered in manner directed by an act passed in the eleventh and twelfth years of the reign of her present Majesty Queen Victoria, chapter forty-three intituled "An Act to facilitate the Performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders (*n*)"; and whenever anything is

(*l*) The county court, therefore, has final jurisdiction up to 50*l*. See sect. 85 (Nos. 8, 11, and 12).

(*m*) See also 41 & 42 Vict. c. 32, s. 23, *post*.

(*n*) There was a distinction in the 7 & 8 Vict. c. 84, with regard to limitation of time between penalties and forfeitures incurred generally, and such as followed upon non-compliance with that act, as by default. Six months were allowed in the first, only three in the latter case. But here the matter is entirely referred to the 11 & 12 Vict. c. 43. The mode of prescribing the recovery of the penalties is rather freely expressed. Probably the limitation mentioned in that statute may be construed to extend to this, notwithstanding the absence of express words of incorporation. Because, if the penalties are to be sought for under 11 & 12 Vict. c. 43, and there is found a time of limitation in it, it would seem that the prosecution could not take effect after that period. See *Morant* v. *Taylor*, 1 Ex. D. 188;

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hereby authorized or required to be done by or before a justice of the peace it may be done as follows: (that is to say,) if such thing arises in respect of any building or wall situate within the city of London, by or before one or more justice or justices of the peace for the said city or by any metropolitan police magistrate, and if such thing arises in respect of any building or wall situate elsewhere within the limits of this act, by or before any metropolitan police magistrate (*o*).

Application of penalties.

104. Any justice of the peace in any case over which jurisdiction is hereby given to him may make such order as to the costs

45 L. J. M. C. 78. It is somewhat clumsy to say that an act was passed in two years of a reign. (*R.* v. *Biers*, 3 Nev. & M. 475.) The Courts, however, in a case of this kind will probably take judicial cognizance that the act is sufficiently stated.

(*o*) The words of this section are so general that it would seem that proceedings may be taken in *any* police court no matter how far from the *locus in quo*. The effect is not only to give one police magistrate jurisdiction over matters arising in the district of another Court, but to give the Metropolitan Police Magistrates jurisdiction within the city. See, however, the cases of *Simpson* v. *Blues*, L. R. 7 C. P. 290; 41 L. J. C. P. 121, and *Washer* v. *Elliott*, 1 C. P. D. 169; 45 L. J. Q. B. 144, as to the non-extension by implication of the jurisdiction of inferior courts.

There may be an indictment for disobedience to an order of justices where no other remedy is provided, but if there be no jurisdiction over the subject-matter, the judge will direct an acquittal, although the defect appears upon the record. (*R.* v. *Hollis*, 2 Stark. 536; on 14 Geo. 3, c. 78).

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of any proceedings of which he has cognizance as he thinks just; he may also direct the whole or any part of any penalty imposed by him under this act to be applied in or towards payment of the costs of the proceedings; and, subject to such direction, all penalties shall be paid into the hands of the treasurer of the said Metropolitan Board, to be applied in such manner as the said Board thinks fit (*p*).

Provisions as to limitation of time when due notice has not been given.

105. In cases where any building has been erected or work done without due notice (*q*) being given to the district surveyor, the

(*p*) It appears from the case of *Wray* v. *Ellis*, 1 E. & E. 276; 28 L. J. M. C. 45, that the prospective words in the Act for regulating the Metropolitan Police Courts (2 & 3 Vict. c. 71), s. 47, are enough to make these penalties payable to the receiver for the Metropolitan Police District, whenever they are recovered before a Metropolitan Police Magistrate. But such, it would seem could hardly have been the intention of the legislature when passing the present act as it then leaves the words of the section making penalties payable to the treasurer of the Metropolitan Board to apply only to penalties recovered in the city of London. See, also, *The Seamen's Hospital Society* v. *The Mayor, &c. of Liverpool*, 4 Ex. 180; 17 L. J. 371. Notwithstanding these decisions (which were not taken to a higher court), it seems doubtful whether they are right in giving effect to the *words* of the earlier act, so as to allow the words of one parliament to bind future parliaments. See per Rolfe, B., in *The Seamen's Hospital Society* v. *The Mayor of Liverpool* (*supra*). See further, as to the effect of 2 & 3 Vict. c. 71, s. 47; *Receiver of Metropolitan Police* v. *Bell*, L. R. 7 Q. B. 433; 41 L. J. M. C. 153.

(*q*) See sect. 38.

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district surveyor may, at any time within one month after he has discovered that such building has been erected or work done, enter the premises for the purpose of seeing that the regulations of this act have been complied with, and the time during which the district surveyor may take any proceeding, or do anything authorized or required by this act to be done by him, in respect of such building or work, shall begin to run from the date of his discovering that such building has been erected or work done (*r*).

Power to appeal to Superior Courts.

106. In every case, except in respect of fees of a district surveyor, in which jurisdiction is hereinbefore given to a justice of the peace, if either party to any such case is dissatisfied with the determination of the justice so convicting, in respect of any point of law, or of the admission or rejection of any evidence, such party may, upon giving notice within seven days (*s*) to the other party of his intention to appeal, appeal therefrom to any of the Superior Courts of Common Law at Westminster (*t*); subject to this

(*r*) See sect. 38.

(*s*) That is from the day of the decision. See *Reg.* v. *Barnet Rural Sanitary Authority*, 1 Q. B. D. 558; 45 L. J. M. C. 105.

(*t*) This appeal will now lie to the High Court of Justice, and will be heard by the divisional court which sits to hear appeals from inferior courts, under Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 45.

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restriction, that no such appeal shall be made by any district surveyor except with the consent of the justice before whom the case is tried, and that no such appeal shall be made by any other party to the case except upon giving such security for costs; and if the case requires it, in addition thereto, such undertaking in respect of desisting in the meantime from any works complained of, or in respect of any other matter or thing arising in the case, as the justice thinks fit (*u*).

Form of appeal.

107. Any appeal so made shall be in the form of a special case, to be agreed on by both parties, or if the parties cannot agree, to be settled by the justice from whose decision the appeal is made: and such case shall be transmitted by the appellant to the

See too, Rules of the Supreme Court, Ord. LVIII., r. 19.

(*u*) This section does not take away the power of a magistrate to state a case under 20 & 21 Vict. c. 43, *Power* v. *Wigmore*, L. R. 7 C. P. 386; see, too, *Steele* v. *Brannan*, 41 L. J. M. C. 85, where it was decided that an appeal to Quarter Sessions did not take away the power to state a case. But there will then be no further appeal to the Court of Appeal, which there will be under this Act (Apell. Jurisd. Act, 1876, 39 & 40 Vict. c. 59, s. 20). The practice with regard to such special cases is apparently not altered by the new Rules of Court which apply only to cases stated in an action or under 13 & 14 Vict. c. 35 (Rules of the Supreme Court, Ord. XXXIX.), except in so far as the tribunal to hear the case is different, as to which see the earlier note to this section.

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rule department of the master's office in the court in which the appeal is to be brought, and be heard in manner provided by the practice of such court.

Notice of action.

108. No writ or process shall be sued out against any district surveyor or other person (*x*) for anything done or intended to be done under the provisions of this act (*y*) until the expiration of one month next after notice in writing (*z*) has been delivered to

(*x*) A person employed by a building owner to erect a building adjoining the house of another, is not an "other person" within the meaning of this section. (*Williams* v. *Golding*, L. R. 1 C. P. 69).

(*y*) An attempt has been made in more than one instance to limit the words "or other person" or the corresponding words in the earlier acts, by the doctrine of *ejusdem generis*, to persons acting in a public capacity similar to that of district surveyors; but the generality of the words has been maintained successfully in every such case. See on the earlier acts *Collins* v. *Poney*, 9 East, 322; *Pratt* v. *Hillman*, 4 B. & C. 269; 3 D. & R. 360; and on the present section, *Wheeler* v. *Gray*, 4 C. B. N. S. 584; 6 C. B. N. S. 606; 27 L. J. C. P. 267; 28 L. J. C. P. 200. See, also, *Wells* v. *Ody*, 2 C. M. & R. 128; and *R.* v. *Hungerford Market Co., Ex parte Yeates*, 1 A. & E. 668; 2 Nev. & M. 340. It is of frequent occurrence also to find that the expression "in pursuance of the act" has been a source of litigation. The older Building Acts, 14 Geo. 3, c. 78, and 8 Vic. c. 84, were not without their difficulties upon this score, and the new words, "done or intended to be done under the provisions of this act," appear to require a similar construction. As to this, see the cases already cited in this note.

(*z*) This notice must be pleaded. (*Davey* v. *Warne*, 14 Mee. & W. 199). See Rules of the Supreme Court, Ord. XIX., r. 18.

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him, or left at his office or usual place of abode, stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in such last-mentioned notice; and unless such notice is proved the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action (*a*), and not afterwards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this act and all special matter in evidence thereunder (*b*).

(*a*) With regard to the right of action within six months next after the fact committed, it has been held, that if any part of a trespass happened within the time limited, the action would lie *pro tanto*. Therefore, where a wall had been begun more than three months* before the action, but was not completed until after the three months, the plaintiff was allowed to recover for so much of the latter cause of complaint, and thus became entitled to his costs. (*Trotter* v. *Simpson*, 5 C. & P. 71). See on the act of Geo. 3., *Payne* v. *Hill*, Lofft, 330.

(*b*) This positive enactment overrides the difficulty which presented itself in *Richards* v. *Easto*, which could not be got over. In trespass for pulling down

* The time limited by the old act, 14 Geo. 3, c. 78.

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a wall, it was intended to set up a defence under 14 Geo. 3, c. 78, s. 100, that the venue should have been laid in Middlesex. The wall was in Surrey. But the statute 5 & 6 Vict. c. 97, s. 3, enacted, that pleading the general use and giving the special matter in evidence should be done away with where the statute was of a local and personal nature. Now, in this case, the Court said that, although classed with public acts, and, moreover, declared to be a public act, the statute 14 Geo. 3, c. 78, was nevertheless merely local and personal; consequently the defence proposed could not be received under not guilty, and the award was therefore directed to stand as a verdict for the plaintiff, and the rule for setting it aside was discharged. (*Richards* v. *Easto*, 14 Mee. & Wels. 244; 3 Dowl. & L. 515). In this case *Davey* v. *Warne* (14 Mee. & Wels. 199), was cited and distinguished.

The general rule by statute may still be pleaded, notwithstanding the alterations in pleading made by the Judicature Acts, but no other defence can be pleaded with it except by leave. (Rules of the Supreme Court, Ord. XIX., r. 16.)

It may here be observed that any breach of a duty imposed by this Act will be a ground of action. See *Guardians of the Holborn Union* v. *The Vestry of St. Leonard, Shoreditch*, 25 W. R. 40.

See now, as to the place of trial of actions, Rules of the Supreme Court, Ord. XXXVI., r. 1, which abolishes local venues.

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Repeal of former Acts and temporary Provisions.

PART V.

REPEAL OF FORMER ACTS AND TEMPORARY PROVISIONS.

REPEAL.

Repeal of 8 & 9 Vict. c. 84, except ss. 54 to 63, and 9 & 10 Vict. c. 5.

109. *From and after the commencement of this act, the following acts, that is to say, an act passed in the eighth year of the reign of her present Majesty, chapter eighty-four, and intituled "An Act for regulating the Construction and the use of Buildings in the Metropolis and its Neighbourhood," with the exception of the sections relating to dangerous and noxious businesses, and numbered respectively fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, and sixty-three(a), and an act passed in the ninth year of the reign of her present Majesty, chapter five, and intituled, "An Act to amend an Act for regulating the Construction and use of Buildings in the Metropolis and its Neigh-*

(a) These clauses are appended with some cases decided upon them.

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bourhood," are throughout the limits of this Act and elsewhere hereby repealed, subject to the following provisions, that is to say,

(1) *That such repeal shall not affect any proceedings authorized to be taken by the said acts or either of them in respect of any act, omission, penalty, matter, or thing, and * pending before the official referees or any other tribunal at the time of the commencement of this act:*

* *Sic.*

(2) *That in cases where any act, omission, or thing has occurred previously to the time of the commencement of this act, in respect of which, if this act had not passed, proceedings might have been taken under the said acts or either of them, then proceedings in respect of such act, omission, or thing may be had under this act in manner following; that is to say, if the matter in question is anything relating to the rights of building and adjoining owners in respect of party structures, proceedings may be had in the county court, but if the matter in question relates to the recovery of any penalty or to any other thing, proceedings may be had before any justice of the peace:*

(3) *That so much of the act of the fourteenth year of King George the Third,*

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PART. V.

Repeal of former Acts and temporary Provisions.

chapter seventy-eight, as was excepted from the operation of the said act of the eighth year of her present Majesty, chapter eighty-four (that is to say), the sections numbered respectively seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, and eighty-six, shall continue in full force (*b*).

7 & 8 VICT. c. 84.

Buildings near businesses dangerous as to fire.

54. And now for the purpose of making provision concerning businesses dangerous in respect of fire or explosion, be it enacted, with regard to the following businesses (that is to say), the manufacture of gunpowder, or of detonating powder, or of matches ignitable by friction or otherwise, or other substances liable to sudden explosion, inflammation, or ignition, or of vitriol, or of turpentine, or of naphtha, or of varnish, or of fireworks, or painted table covers, and any other manufacture dangerous on account of the liability of the materials or substances employed therein to cause sudden fire or explosion, so far as relates to the erection of buildings in the neighbourhood of the place where any such business is carried on, and so far as relates to the carrying on of any such business in the neighbourhood of public ways or buildings, that it shall not be lawful hereafter to erect any building of any class nearer than fifty feet

(*b*) This and the parts italicised in the next section are repealed by the Stat. L. Rev. Act, 1875, partly as obsolete, and partly because since 13 & 14 Vict. c. 21, s. 5, such repeal will not revive the repealed sections of the earlier acts.

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from any building which shall be in use for any such dangerous business; but if a building already existing within fifty feet from any such building be hereafter pulled down, burnt, or destroyed by tempest, such building may be rebuilt; and that it shall not be lawful for any person to establish or newly carry on any such business, either in any building or vault, or in the open air, at a less distance than forty feet from any public way, or than fifty feet from any other building, or any vacant ground belonging to any other person than his landlord; and that if any such business be now carried on in any situation within such distances, then from the expiration of the period of twenty years next after the passing of this act it shall not be lawful to continue to carry on such business in such situations; and that if any person erect any building in the neighbourhood of any such business contrary to this act, then, on conviction thereof before two justices, he shall forfeit a sum not exceeding fifty pounds for every day during which such building shall so remain near to such dangerous business; or if any person establish anew any such business, or carry on any such business contrary to this act, then, on conviction thereof before two justices, such person shall be liable to forfeit for every day during which such business shall be so carried on, a sum not exceeding fifty pounds, as the said justices shall determine, and that it shall be lawful for the justices also to award to the prosecutor such costs as shall be deemed reasonable; and that if the offender either fail or refuse to pay such penalty and costs immediately after such conviction, then they may be levied by distress of the goods and chattels of the person convicted; or if there be no such distress, then such person shall be committed to the common gaol or house of correction for any time not exceeding six months, at the discretion of

Distance from buildings.

New businesses.

Prohibition after twenty years.

Fifty pounds penalty, and costs.

Costs.

Distress; or imprisonment.

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PART V. *Acts Incorporated.*

such justices, and that by warrant under the hands and seals of two or more justices of the peace.

Buildings near noxious businesses as regards health.

55. And now, for the purpose of making provision concerning businesses offensive or noxious, be it enacted, with regard to the following businesses (that is to say) (*c*)—

Blood-boiler, Soap-boiler,
Bone-boiler, Tallow-melter,
Fellmonger, Tripe-boiler,
Slaughterer of cattle, sheep, or horses (*d*).

and any other like business offensive or noxious (*e*), so far as relates to the erection of buildings in the neighbourhood of any such business, and so far as relates to the carrying on of any such business in the neighbourhood of any public way, or of other buildings of the first or dwelling-house class, that it shall not be lawful hereafter to erect any buildings of the first or dwelling-house class nearer to than fifty feet from any building which shall be in use for any such offensive or noxious business, but if a building already existing within fifty feet be hereafter burnt, pulled down, or destroyed by tempest

Distance from buildings.

New businesses.

(*c*) This and the following section are now, by the Slaughter-houses, &c. (Metropolis), Act, 1874 (37 & 38 Vict. c. 67), s. 14, repealed so far as relates to the businesses of soap-boiler, tallow-melter, knacker, fellmonger, tripe-boiler, or slaughterer of cattle, within the meaning given to those terms by that Act.

(*d*) See Public Health Act, 1875, 38 & 39 Vict. c. 55, ss. 112—115, 169 and 170, and refer to 26 Geo. 3, c. 71; 7 & 8 Vict. c. 87; and to 10 & 11 Vict. c. 34, ss. 1, and 125—131, inclusive.

(*e*) Nothing is here said upon the subject of smoke. That nuisance, however, has been prevented and successfully abated under 16 & 17 Vict. c. 128. See the case of *Rich* v. *Basterfield*, 4 C. B. 783; 16 L. J. C. P. 273; 2 C. & K. 257.

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such building may be rebuilt ; and that it shall not be lawful for any person to establish or newly carry on any such business, either in any building or vault or in the open air at a less distance than forty feet from any public way, or than fifty feet from any other such buildings of the first or dwelling-house class ; and that if any such business be now carried on in any situation within such distances, then, from the expiration of the period of thirty years next after the passing of this act, it shall cease to be lawful to continue to carry on such business in such situation save as is hereinafter provided ; and that if any person erect any building in the neighbourhood of any such business contrary to this act, then, on conviction thereof before two justices he shall forfeit a sum not exceeding fifty pounds for every day during which such building shall remain near to such offensive or noxious business ; or if any person establish anew any such business, or carry on any such business contrary to this act, then, on conviction thereof before two justices, such person is hereby made liable to forfeit for every day during which such business shall be carried on a sum not exceeding fifty pounds, as the said justices shall determine, and that it shall be lawful for the justices also to award to the prosecutor, such costs as shall be deemed reasonable ; and that if the offender either fail or refuse to pay such penalty and costs immediately after such conviction, then they may be levied by distress of the goods and chattels of the person convicted ; or if there be no such distress, then such person shall be committed to the common gaol or house of correction for any time not exceeding six months, at the discretion of such justices, and that by warrant under the hands and seals of two or more justices of the peace.

Prohibition after thirty years.

Fifty pounds penalty and costs.

Distress ;

or imprisonment.

56. Provided always, and be it enacted, with

The penalty hereinbefore

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regard to any such offensive or noxious business, whether such business be now carried on at a less distance than forty feet from any public way, or than fifty feet from any other building, or be hereinafter carried on at a greater distance, yet so as to cause danger or annoyance, so far as relates to the mitigation of any penalty or punishment for unlawfully carrying on thereof, that every such penalty hereinbefore imposed shall be enforceable only at a special sessions of the peace summoned for that purpose, or on an appeal as hereinafter provided (*f*), or on a trial as hereinafter provided (*g*); and that, notwithstanding the said term of thirty years shall have expired, if any party charged with carrying on such business show that in carrying on such business all the means then known to be available for mitigating the effect of such business in any such respect have been adopted, then it shall be lawful for such justices to receive evidence thereof, and according to such evidence to mitigate the penalty as to them shall seem fit: provided further, with regard to such offensive or noxious business, so far as relates to the adoption of means to mitigate the injurious effects thereof, that, notwithstanding the said period of thirty years shall have expired, if it shall appear to the justices, whether at petty sessions as aforesaid, or on appeal, or on trial by jury, as hereinafter provided, that the party carrying on any such business shall have made due endeavours to carry on the same with a view to mitigate, so far as possible, the effects of such business, then, although he hath not adopted all or the best means available for the purpose, yet it shall be lawful for such justices assembled and they are hereby empowered to suspend the exe-

imposed to be enforceable only at a special sessions.

Use of means to mitigate noxiousness of businesses.

Adoption of means to mitigate after conviction.

(*f*) *Infra*, sect. 57.
(*g*) *Infra*, sect. 58.

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cution of their order or determination, upon condition that within a reasonable time, to be named, the party convicted do adopt such other or better means as to the said justices shall seem fit, or before passing final sentence, and without consulting the prosecutor, to make such order touching the carrying on of such business as shall be by the said court thought expedient for preventing the nuisance in future: provided always, that if the matter in respect of which such penalty shall be incurred come before any superior court (*h*) it shall be lawful for such court to exercise such power of mitigating such penalty, or of suspending the execution of any judgment, order or determination in the matter, or to make such order touching the carrying on of such business, as to the court shall seem fit in the case.

Mitigation of penalty by superior courts.

57. And be it enacted, with regard to any business offensive, noxious or dangerous, and with regard to any building erected or continued within any such distance as aforesaid from any such business dangerous, noxious or offensive,* so far as relates to a conviction in respect of any such business, and to an appeal from such conviction, that if any person be dissatisfied with the decision of such justices, and if, within four days after such decision, notice be given to the party appealed against, by or on behalf of such person, of his intention to appeal, and if he enter into a recognizance, with two sufficient securities, conditioned to try such appeal, and to abide the order of the court, and pay to the party appealed against such costs (if any) as shall be awarded against him, then it shall be lawful for such party so dissatisfied to appeal against such conviction to the justices of the peace at their general quarter sessions of the peace to be holden within four months after such conviction for the place in which such premises shall

Conviction and appeal as to certain trades not specified.

* *Sic.*

Recognizances.

Sessions.

(*h*) By certiorari, indictment or otherwise.

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PART V. *Acts Incorporated.*

be situate; and that if the premises be situate within the city of London and liberties thereof, then the appeal must be to the quarter sessions thereof, or if the premises be situated in the counties of Middlesex, Kent or Surrey, or in the city and liberties of Westminster, or in the liberties of her Majesty's Tower of London, then to the quarter sessions thereof respectively, as the case shall be; and that if within the above-mentioned period such appellant shall have entered into such recognizance as herein required, and if within one month thereafter he give notice of the grounds of such appeal, then it shall be lawful for such justices and they are hereby empowered t proceed to hear and examine on oath into the causes and matters of such appeal (which oath they are hereby empowered to administer), and to determine the same, and to award such costs to be paid by the said parties as they think proper; and the order, judgment and determination of the said justices in their respective sessions shall be binding and conclusive upon all parties.

Proceedings

Trial by jury at Quarter Sessions.

58. Provided always, and be it enacted, that if before conviction by two such justices the party complained against desire to have the matter tried by a jury, and enter into a recognizance to try such matter without delay, and to pay all costs of trial if a verdict be found against him, then such matter may be tried at the next practicable court of quarter sessions or whensoever the court shall appoint; and that thereupon, or on the application of such party, it shall be lawful for the said court of quarter sessions and they are hereby authorized and required to issue their warrant or precept to the sheriff or other proper officer (as the case may be), requiring him to return a competent number of persons qualified to serve on juries according to the provisions of an act made in the sixth year of the reign of his late Majesty King

Summoning of a jury.

6 Geo. 4, c 50.

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George the Fourth, "for consolidating and amending the Laws relative to Jurors and Juries;" (*i*) and that it shall be lawful for the said court of quarter sessions and they are hereby authorised and empowered, by precept, from time to time as occasion may require, to call before them respectively every person who shall be thought proper or necessary to be examined as a witness before them on oath concerning the premises; and that if the said court think fit it shall be lawful for them and they are hereby empowered to authorise the said jury to view the place in question in such manner as they shall direct, and to command the attendance of such jury, and of all such witnesses and parties as shall be necessary or proper, until such affairs for which they are summoned shall be concluded; and that the said jury shall inquire and try, and determine by their verdict, whether the business in question be offensive or noxious, and whether the party in question have done any act whereby the penalty hereby imposed in respect thereof has been incurred; and that, subject to the power hereinbfore conferred of mitigating such penalty, or suspending their judgment, order or determination thereon, or making such order touching the carrying on of the business aforesaid, the said court of quarter sessions shall give judgment according to such verdict, and shall award the penalty (if any) incurred by the defendant, and shall and may (if they see fit) award to either of the parties such costs as they may deem reasonable; which verdict and the judgment, award, order or determination thereupon shall be binding and conclusive (*k*).

Witnesses.

View of the premises.

Verdict of jury.

Judgment according to verdict;

and judgment to be binding.

59. And be it enacted, with regard to any appeal

(*i*) Largely altered by various later acts.
(*k*) The certiorari is not taken away.

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PART V. *Acts Incorporated.*

in respect of a conviction for carrying on any such dangerous, offensive, or noxious business, so far as relates to the place where such appeal is to be heard,

Appeals to quarter sessions for Surrey and Kent.

that if the appeal be to the general quarter sessions of the peace for the county of Surrey or the county of Kent, then the jury (if any) to be impannelled in pursuance of this act, and all parties required to attend the quarter sessions for the said counties pursuant to such application, shall be impannelled and required to attend at some general or special adjournment of the said quarter sessions to be held within six weeks next after the original sessions; and that if the matter relate to the county of Surrey, then such adjournment shall be to some convenient place in the

To sessions at Southwark.

borough of Southwark in the said county; and that if the matter relate to the county of Kent, then such adjournment shall be to some convenient place in

To sessions at Greenwich.

the borough of Greenwich in the said county; and such times and places shall be appointed by the justices of the said counties respectively assembled at such original sessions; and that from time to time

Further meetings.

every further meeting of the said sessions, for anything to be done upon such application, shall be appointed at or within the space of three weeks from the last meeting; and that from time to time it shall be lawful for the justices of the peace for the said counties of Surrey and Kent respectively, and they

Adjournments.

respectively are hereby empowered and required, to make such adjournment and hold such sessions as there shall be occasion.

Common law and statutory remedies not affected.

60. Provided always, and be it declared, with regard to any business which is contrary to any existing act of parliament or otherwise contrary to law, so far as relates to the operation of this act in that behalf, that, notwithstanding anything in this act contained, this act shall not be deemed to authorise any person to carry on any such business, either

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within such limits or otherwise, or any business which it is unlawful to carry on within any limits or in any manner contrary to any public, local or private act of parliament, or otherwise contrary to law; nor to affect, abridge or restrain the right, the duty, or the power of any person, whether private person or public officer, to prosecute, either civilly or criminally, any person who shall carry on within the limits of this act any offensive, noxious, or dangerous business.

Regulation or removal of trades deemed nuisances by purchase.

61. And further, for the regulation or removal of any offensive, noxious or dangerous business now carried on (*l*), be it enacted, with regard to any such business, so far as relates to the purchase thereof (*m*), or of the premises wherein it shall be carried on, that if two-thirds in number of the inhabitant householders of any parish in which such business shall be carried on present a memorial to her Majesty in council, stating the existence of such offensive, noxious or dangerous business in such parish or the neighbourhood thereof, and praying the removal of such business therefrom, and thereby engaging to provide compensation to the persons carrying on the same, either at the expense of the memorialists, or by means of a rate to be levied on the inhabitants of the said parish, or such part thereof as may be affected by such business, then it shall be lawful for her Majesty to refer the matter to the Lords of the Committee of Privy Council for Trade to consider the character of such business, whether it be offensive, noxious or dangerous; and if it appear to be so, and that there are no means of rendering it otherwise by

Memorial to Queen in council.

Order for removal

(*l*) This clause is available till the respective periods of twenty years and thirty years, mentioned respectively in sects. 54 and 56, have elapsed.

(*m*) See 10 & 11 Vict. c. 34, ss. 1, 134.

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the adoption of methods available, without unreasonable sacrifice on the part of the person by whom it is carried on, then it shall be lawful for her Majesty, by order in council, to direct that the removal of such business may be purchased, either at the expense of the memorialists or by means of a rate as aforesaid, as to her Majesty shall seem fit, and also to direct the sheriff of the county or other proper person in the parish or liberty in which such business is carried on to summon a jury, according to the provisions of an act made and passed in the fourth year of the reign of her present Majesty, intituled "An Act to enable her Majesty's Commissioners of Works to make a new Street from Coventry Street to Long Acre, and for other Improvements in the Metropolis," to determine what compensation shall be paid to the party carrying on such business for the removal thereof, and to the owner and occupier of the premises for the restriction of the use of his buildings for such purpose; and that if within three months after the verdict of such jury shall be given, and judgment thereon, the inhabitants of such parish or neighbourhood pay or tender such compensation, then within three months from the payment or tender of such compensation it shall cease to be lawful for the party carrying on such business to continue the same, and for any owner or occupier thereof either to carry on or permit to be carried on such business in the same or any part of the same premises.

Compensation.

4 & 5 Vict. c. 12.

Unlawful to continue such trades after purchase.

Funds for defraying compensation.

62. And be it enacted, with regard to the funds for defraying such compensation, so far as relates to the raising thereof, that if her Majesty shall by such order direct the compensation to be paid by means of a rate, then it shall be lawful for the overseers of the parish to raise such sum as shall be necessary, either as a separate rate in the nature of poor's rate, or as

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part of the poor's rate, on the inhabitants at large of such parish; or if in pursuance of the memorial of the inhabitants of such part of the said parish as shall be affected by the said business it be appointed by such order in council that such last-mentioned inhabitants do defray such compensation, then it shall be lawful for the said overseers to raise such sum as shall be necessary for that purpose; and that if such rate be so levied either on the inhabitants at large of such parish, or on the inhabitants of such part thereof as aforesaid, then such rate may be levied and recovered as poor's rates are leviable and recoverable.

Levy of rate.

63. Provided always, and be it enacted, with regard to public gas works and other works heretofore established within the limits of this act, so far as relates to the operation of the provisions of this act in reference to businesses dangerous in respect of fire or explosion, or offensive or noxious, that such provisions shall not be deemed to apply to any such public gas works; and that if by any act of parliament now in force relating to gas companies to which such works belong any extension of such works, or any additional works, or any other works, be authorised to be erected or substituted, then such provisions shall not be deemed to apply to any such extension, addition, or substitution within the limits of the district now lighted from such first-mentioned works; and that such provisions shall not be deemed to apply to any premises entered or used for the purpose of distillation or the rectification of spirits under the survey of the commissioners of excise or their officers.

Exemption of public gas works.

Extension of substitution of works.

Distilleries.

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PART V.

Acts Inc rporated.

14 GEO. 3, c. 78.

[*All except sects.* 83 *and* 86, *are now repealed by* "*The Fire Brigade* (*Metropolis*) *Act*, 1865" (28 & 29 *Vict. c.* 90), *s.* 34.]

Money insured on houses burnt how to be applied.

83. "And, in order to deter and hinder ill-minded persons from wilfully setting their house or houses or other buildings, on fire, with a view of gaining to themselves the insurance money, whereby the lives and fortunes of many families may be lost or endangered;" be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the respective governors or directors of the several insurance offices for insuring houses or other buildings against loss by fire, and they are hereby authorised and required, upon the request of any person or persons interested in or entitled unto any house or houses, or other buildings which may hereafter be burnt down, demolished or damaged by fire, or upon any grounds of suspicion that the owner or owners, occupier or occupiers, or other person or persons who shall have injured such house or houses or other buildings, have been guilty of fraud, or of wilfully setting their house or houses, or other buildings on fire, to cause the insurance money to be laid out and expended, as far as the same will go, towards rebuilding, reinstating, or repairing such house or houses, or other buildings, so burnt down, demolished or damaged by fire; unless the party or parties claiming such insurance money shall within sixty days next after his, her or their claim is adjusted, give a sufficient security to the governors or directors of the insurance office where such house or houses, or other buildings, are insured, that the same in-

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surance money shall be laid out and expended as aforesaid; or unless the said insurance money shall be, in that time, settled and disposed of to and amongst all the contending parties to the satisfaction and approbation of such governors or directors of such insurance office respectively.

No action to lie against a person where the fire accidentally begins.

86. And be it further enacted by the authority aforesaid, That no action, suit or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn or other building, or on whose estate any fire shall, after the said twenty-fourth day of June, accidentally begin, nor shall any recompense be made by such person for any damage suffered thereby, any law, usage or custom to the contrary notwithstanding; and in such case, if any action be brought, the defendant may plead the general issue, and give this act, and the special matter in evidence, at any trial thereupon to be had; *and in case the plaintiff become non-suited or discontinue his action or suit, or if a verdict pass against him, the defendant shall recover treble costs,* provided that no contract or agreement made between landlord and tenant shall be hereby defeated or made void (*n*).

Repeal of former Acts and temporary Provisions.

110. *Any contract made previously to the passing of this act for the erection of a new building shall be carried into effect in the same manner as if this act had been passed at the time of the making thereof, and the necessary deviations from the terms*

As to contracts made previously to passing of act.

(*n*) See *Viscount Canterbury* v. *The Attorney-General*, 1 Phil. Ch. Ca. 306. The italicised part of this section is repealed by St. L. Rev. Act, 1861.

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PART V.

Repeal of former Acts and temporary Provisions.

of such contract may be made accordingly: and if any dispute arises in respect of any loss sustained by any party to such contract by reason of such necessary deviations, such dispute shall be determined by the county court; and whenever any cost or expenses have been paid by any owner in pursuance of this act, then as to any structure held under any lease or agreement made previously to the commencement of this act, it shall be lawful for such owner to recover the same from the persons hitherto liable by law, or by such existing lease or contract, to maintain or repair the structure in respect of which costs and expenses have been incurred.

Liabilities under contract between landlord and tenant not to be affected.

111. Nothing herein contained shall vary or affect the rights or liabilities as between landlord and tenant under any contract between them (*o*).

As to iron buildings constructed before this act comes into operation.

112. In cases where any iron building (*p*) has been constructed or is in the progress of construction previously to the time at which this act comes into operation, and doubts are entertained whether such building is permitted by law, any person interested in such building may make an application to the commissioners of works and buildings, to signify their approval of

(*o*) Refer to sect. 75.
(*p*) See sect 56.

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Repeal of former Acts and temporary Provisions.

such building; and the commissioners of works and buildings, upon being satisfied of the stability of such building, may approve of the same, and upon such approval being given such building shall be deemed to have been constructed in manner permitted by law, and this section shall come into operation immediately after the passing of this act.

Compensation to official referees and registrar of metropolitan buildings.

113. [Compensation to official referees and registrar of metropolitan buildings.]

Compensation to clerks in office of metropolitan buildings.

114. [Compensation to clerks in office of metropolitan buildings.]

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1st Schedule.

FIRST SCHEDULE.

PRELIMINARY.

Structure of buildings.

1. Every building (*a*) shall be enclosed with walls (*b*) constructed of brick, stone, or other hard and incombustible substances, and the foundations shall rest on the solid ground, or upon concrete or upon other solid sub-substructures.

Construction of walls of brick, stone, &c.

2. Every wall constructed of brick, stone, or other similar substances, shall be properly bonded and solidly put together with mortar or cement, and no part of such wall shall overhang any part underneath it, and all return walls shall be properly bonded together.

Extra thickness of certain stone walls.

3. The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one-third greater than the thickness prescribed for stone walls in the rules hereinafter contained.

Thickness of walls.

4. The thickness of every wall as hereinafter determined shall be the minimum thickness.

Height of story.

5. The height of every topmost story

(*a*) As to what is a building, see *Stevens* v. *Gourley*, 29 L. J. C. P. 1.

(*b*) Including party as well as external walls.

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shall be measured from the level of its floor up to the under side of the tie of the roof, or up to half the vertical height of the rafters, when the roof has no tie; and the height of every other story shall be the clear height of such story exclusive of the thickness of the floor.

Height of external and party walls.

6. The height of every external (*c*) and party wall (*c*) shall be measured from the base of the wall to the level of the top of the topmost story.

Length of walls.

7. Walls are deemed to be divided into distinct lengths by return walls, and the length of every wall is measured from the centre of one return wall to the centre of another; provided that such return walls are external, party, or cross walls of the thickness hereinafter required, and bonded into the walls so deemed to be divided.

Footings of walls.

8. The projection of the bottom of the footing (*d*) of every wall, on each side of the wall, shall be at least equal to one-half of the thickness of the wall at its base; and the diminution of the footing of every wall shall be formed in regular offsets, and the height from the bottom of such footing to the base of the wall shall be at the least equal to one-half of the thickness of the wall at its base.

(*c*) See s. 3, p. 2.
(*d*) See s. 8, p. 15.

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1st Schedule.

PART I.

PART I.

RULES FOR THE WALLS OF DWELLING-HOUSES.

Thickness of walls of dwelling-houses.

1. The external (*a*) and party walls (*a*) of dwelling-houses shall be made throughout the different stories of the thickness shown in the following table, arranged according to the heights and lengths of the walls, and calculated for walls up to one hundred feet in height, and supposed to be built of bricks not less than eight and a half inches and not more than nine and a half inches in length, the heights of the stories being subject to the condition hereinafter given (*b*).

2. TABLE.

I.	II.	III.	IV.
Height up to 100 Feet.	Length up to 45 Feet.	Length up to 80 Feet.	Length unlimited.
	Two Stories, 21½ In. Three Stories, 17½ In. Remainder, 13 In.	Two Stories, 26 In. Two Stories, 21½ In. Two Stories, 17½ In. Remainder, 13 In.	One Story, 30 In. Two Stories, 26 In. Two Stories, 21½ In. Two Stories, 17½ In. Remainder, 13 In.
Height up to 90 Feet.	Length up to 45 Feet.	Length up to 70 Feet.	Length unlimited.
	Two Stories, 21½ In. Two Stories, 17½ In. Remainder, 13 In.	One Story, 26 In. Two Stories, 21½ In. Two Stories, 17½ In. Remainder, 13 In.	One Story, 30 In. Two Stories, 26 In. One Story, 21½ In. Two Stories, 17½ In. Remainder, 13 In.

(*a*) See these defined in s. 3, p. 2.

(*b*) See sect. 12 and sect. 55. The Metropolitan Board of Works may modify these rules.

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I.	II.	III.	IV.
Height up to 80 Feet.	Length up to 40 Feet. One Story, 21½ In. Two Stories, 17½ In. Remainder, 13 In.	Length up to 60 Feet. Two Stories, 21½ In. Two Stories, 17½ In. Remainder, 13 In.	Length unlimited. One Story, 26 In. Two Stories, 21½ In. Two Stories, 17½ In. Remainder, 13 In.
Height up to 70 Feet.	Length up to 40 Feet. Two Stories, 17½ In. Remainder, 13 In.	Length up to 55 Feet. One Story, 21½ In. Two Stories, 17½ In. Remainder, 13 In.	Length unlimited. One Story, 26 In. Two Stories, 21½ In. One Story, 17½ In. Remainder, 13 In.
Height up to 60 Feet.	Length up to 30 Feet. One Story, 17½ In. Remainder, 13 In.	Length up to 50 Feet. Two Stories, 17½ In. Remainder, 13 In.	Length unlimited. One Story, 21½ In. Two Stories, 17½ In. Remainder, 13 In.
Height up to 50 Feet.	Length up to 30 Feet. Wall below the Topmost Story, 13 In. Topmost Story, 8½ In. Remainder, 8½ In.	Length up to 45 Feet. One Story, 17½ In. Rest of Wall below Topmost Story, 13 In. Topmost Story, 8½ In. Remainder, 8½ In.	Length unlimited. One Story, 21½ In. One Story, 17½ In. Remainder, 13 In.
Height up to 40 Feet.	Length up to 35 Feet. Wall below Two Topmost Stories, 13 In. Two Topmost Stories, 8½ In. Remainder, 8½ In.	Length unlimited. One Story, 17½ In. Rest of Wall below Topmost Story, 13 In. Topmost Story, 8½ In. Remainder, 8½ In.	
Height up to 30 Feet.	Length up to 35 Feet. Wall below Two Topmost Stories, 13 In. Two Topmost Stories, 8½ In. Remainder, 8½ In.	Length unlimited. Wall below Topmost Story, 13 In. Topmost Story, 8½ In. Remainder, 8½ In.	
Height up to 25 Feet.	Length up to 30 Feet. From Base to Top of Wall, 8½ In.	Length unlimited. Wall below Topmost Story, 13 In. Topmost Story, 8½ In. Remainder, 8½ In.	

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1st Schedule.

Explanation of tables.

3. In using the above table the height of the wall is to be reckoned on the first vertical column on the left hand of the table, and the length of the wall on the corresponding horizontal column. The thickness of the wall in each story is given in inches, and begins with the wall from the base upwards.

Qualification in case of certain walls.

4. If any external or party wall, measured from centre to centre, is not more than twenty-five feet distant from any other external or party wall to which it is tied by the beams of any floor or floors, other than the ground floor, or the floor of any story formed in the roof, the length of such wall is not to be taken into consideration, and the thickness of the wall will be found in the second vertical column in the above table.

Condition in respect of stories exceeding a certain height.

5. If any story exceeds in height sixteen times the thickness prescribed for the walls of such story in the above table, the thickness of each external and party wall throughout such story shall be increased to one-sixteenth part of the height of the story; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one-fourth part of the length of the wall.

Restriction in case of certain stories.

6. No story enclosed with walls less than thirteen inches in thickness shall be more than ten feet in height.

Thickness of walls

7. The thickness of any wall of a dwelling-

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house, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above tables, or of such less thickness as may be approved by the Metropolitan Board, with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally no diminution shall be allowed in the thickness required by the foregoing rules for such last-mentioned walls.

built of materials other than such bricks as aforesaid.

8. All buildings excepting public buildings, and such buildings as are hereinafter defined to be buildings of the warehouse class, shall, as respects the thickness of their walls, be subject to the rules given for dwelling houses.

Rule as to buildings not being public buildings or buildings of the warehouse class.

PART II.

RULES FOR THE WALLS OF BUILDINGS OF THE WAREHOUSE CLASS (*a*).

1. The warehouse class shall comprise all warehouses, manufactories, breweries and distilleries (*b*).

Definition of warehouse class.

(*a*) These rules do not apply to buildings used for the manufacture of steam vessels beyond three miles from St. Paul's (23 & 24 Vict. c. 52), *post*, p. 153.

(*b*) This is usually taken to exclude buildings of the nature of a warehouse, which are merely used for retail business, including in the latter term the various co-operative stores.

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1st Schedule. PART II. Thickness at base.

2. The external (*c*) and party walls (*c*) of buildings of the warehouse class shall at the base be made of the thickness shown in the following table, calculated for walls up to one hundred feet in height, and supposed to be built of bricks not less than eight and a half inches and not more than nine and a half inches in length.

3. TABLE.

I.	II.	III.	IV.
Height up to 100 Feet.	Length up to 55 Feet. — Base, 26 Inches.	Length up to 70 Feet. — Base, 30 Inches.	Length unlimited. — Base, 34 Inches.
Height up to 90 Feet.	Length up to 60 Feet. — Base, 26 Inches.	Length up to 70 Feet. — Base, 30 Inches.	Length unlimited. — Base, 34 Inches.
Height up to 80 Feet.	Length up to 45 Feet. — Base, 21½ Inches.	Length up to 60 Feet. — Base, 26 Inches.	Length unlimited. — Base, 30 Inches.
Height up to 70 Feet.	Length up to 30 Feet. — Base, 17½ Inches.	Length up to 45 Feet. — Base, 21½ Inches.	Length unlimited. — Base, 26 Inches.
Height up to 60 Feet.	Length up to 35 Feet. — Base, 17½ Inches.	Length up to 50 Feet. — Base, 21½ Inches.	Length unlimited. — Base, 26 Inches.
Height up to 50 Feet.	Length up to 40 Feet. — Base, 17½ Inches.	Length up to 70 Feet. — Base, 21½ Inches.	Length unlimited. — Base, 26 Inches.

(*c*) See these defined in s. 3, p. 2.

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I.	II.	III.	IV.
Height up to 40 Feet.	Length up to 30 Feet. — Base, 13 Inches.	Length up to 60 Feet. — Base, 17½ Inches.	Length unlimited. — Base, 21½ Inches.
Height up to 30 Feet.	Length up to 45 Feet. — Base, 13 Inches.	Length unlimited. — Base, 17½ Inches.	
Height up to 25 Feet.	Length unlimited. — Base, 13 Inches.		

1st Schedule. PART II. Explanation of Table.

4. The above table is to be used in the same manner as the table previously given for the walls of dwelling-houses, and is subject to the same qualifications and conditions respecting walls not more than twenty-five feet distant from each other.

Thickness at top of walls and through intermediate space.

5. The thickness of the walls of buildings of the warehouse class at the top, and for sixteen feet below the top, shall be thirteen inches; and the intermediate parts of the wall between the base and such sixteen feet below the top shall be built solid throughout the space between straight lines drawn on each side of the wall, and joining the thickness at the base to the thickness at sixteen feet below the top, as above determined; nevertheless, in walls not exceeding thirty feet in height the walls of the topmost story may be eight inches and a half thick.

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1st Schedule. PART II.

Condition in respect of stories exceeding a certain height.

6. If in any story of a building of the warehouse class the thickness of the walls, as determined by the rules hereinbefore given, is less than one fourteenth part of the height of such story, the thickness of the wall shall be increased to one fourteenth part of the height of the story; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one fourth part of the length of the wall.

Thickness of walls built of materials other than such bricks as aforesaid.

7. The thickness of any wall of a building of the warehouse class, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above tables, or of such less thickness as may be approved by the Metropolitan Board, with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally no diminution shall be allowed in the thickness required by the foregoing rules for such last-mentioned walls.

MISCELLANEOUS.

Cross walls.

1. The thickness of a cross wall shall be two-thirds of the thickness hereinbefore required for an external or party wall of the same dimensions, and belonging to the same

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class of buildings, but never less than eight and a half inches, and no wall sub-dividing any building shall be deemed to be a cross wall, unless it is carried up to two-thirds of the height of the external or party walls, and unless the recesses and openings therein do not exceed one-half of the vertical surface of the wall in each story.

Extra thickness of certain stone walls.

2. The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one-third greater than the thickness prescribed in the rules aforesaid.

3. Buildings to which the preceding rules are inapplicable require the special sanction of the Metropolitan Board of Works.

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SECOND SCHEDULE.

FEES PAYABLE TO DISTRICT SURVEYORS.

2nd Schedule.

PART I.

PART I.

Fees for New Buildings (*a*).

	s.	*d.*
For every building not exceeding four hundred square feet in area, and not more than two stories in height	30	0
For every additional story . .	5	0
For every additional square of one hundred feet or fraction of such square	2	6
But no fee shall exceed ten pounds.		
And for every building not exceeding four hundred square feet in area, and of one story only in height, the fees shall be (*b*)	15	0

Fees for Additions or Alterations (*c*).

For every addition or alteration made to any building after the roof		

(*a*) Some difficulty has been felt in practice as to the clear interpretation of this table, but it is now usually taken to mean that the last entry is not included in the first. It would have been clearer and more artistic if placed first.

(*b*) See sects. 49, 50, p. 55.

(*c*) See sect. 9, p. 16.

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	s.	d.	2nd Schedule. Part I
thereof has been covered in, the fee shall be half of the fee charged (*d*) in the case of a new building.			
For inspecting the arches or stone floors over or under public ways (*e*	10	0	
For inspecting the formatoin of openings in party walls (*f*) .	10	0	

PART II.

			2nd Schedule. Part II.
For inspecting dangerous structures, by direction of the Commissioners of Police or Sewers (*g*) . . .	20	0	

N.B.—In this schedule "area" shall include the area of any attached building (*h*).

(*d*) This must mean *chargeable*, not what was charged when the building was erected.

(*e*) See sects. 24, 25. In estimating the fees to be paid for such inspection, it must be ascertained how many buildings the arches, &c., are to be appropriated to, and a fee is payable in respect of each building (*Power* v. *Wigmore*, L. R. 7 C. P. 386 ; 27 L. T. N. S. 148).

(*f*) See ss. 13, 28, pp. 18, 37.

(*g*) Sect. 69, and note to s. 70.

(*h*) See s. 28 and notes thereto, p. 37.

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METROPOLITAN BUILDING ACT (AMENDMENT), 1860.

23 & 24 Vict. c. 52.

An Act to alter and amend "The Metropolitan Building Act (1855)."

[23rd July, 1860.

Whereas certain rules of "The Metropolitan Building Act, 1855," have been found to operate prejudicially by limiting the contents of buildings to be erected as workshops for the manufacture of the machinery and the boilers of steam vessels, and as the increased and increasing size of such machinery and boilers for the Royal and Commercial Marine of this country requires larger areas for their manufacture than are allowed by such rules, it is expedient to amend the said act: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This act may be cited for all purposes as "The Metropolitan Building Act (Amendment), 1860."

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Rules as to cubical dimensions of the Metropolitan Building Act, 1855, not to apply to buildings to be used for the manufacture of machinery and boilers of steam vessels, provided that such buildings shall consist of one floor only, &c.

2. The rules of "The Metropolitan Building Act, 1855," limiting the cubical dimensions or contents of buildings used either wholly or in part for the purposes of trade or manufacture (*a*), shall not after the passing of this act apply to any building to be used wholly for the manufacture of the machinery and boilers of steam vessels beyond the distance of three miles from *Saint Paul's* Cathedral: Provided always, that every such building shall consist of one floor only, and shall be constructed of brick, stone, iron, or other incombustible material; and it shall not be lawful for the owners, lessees, or occupiers thereof, or for any persons interested therein, to use such building for any other purpose than the manufacture of the machinery and the boilers of steam vessels until all the rules and provisions of this act, as to party walls and other matters which are applicable to buildings of a similar character, shall have been duly complied with: Provided also, that every such building, if of greater dimensions than two hundred and sixteen thousand cubic feet, shall be subject to the approval of the Metropolitan Board of Works, in the same manner as iron buildings or buildings to which the rules of the said act are inapplicable as set forth in the fifty-sixth section of such act.

(*a*) See sect. 27 (4) of the principal act, and note thereto.

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METROPOLITAN BUILDING AMENDMENT ACT, 1861.

24 & 25 VICT. c. 87.

An Act to amend the Metropolitan Building Act (1855).

[6th August, 1861.

17 & 18 Vict. c. cvii.

WHEREAS by "the Exhibition of 1851 Roads and Lands Act" all buildings erected or to be erected by "the Commissioners for the Exhibition of 1851" were exempted from the operation of the acts then in force for regulating the construction of buildings in the metropolis and its neighbourhood: And whereas the said last-mentioned acts were repealed by "the Metropolitan Building Act, 1855," and new regulations for the construction of buildings substituted; but doubts are entertained whether the exemption provided by the said first-mentioned act is continued by the said Building Act of 1855: And whereas it is expedient that such doubts should be removed: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same as follows:

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Provisions of 18 & 19 Vict. c. 122, not to apply to buildings of Commissioners for the Exhibition of 1851.

1. The first part of the Metropolitan Building Act, 1855, containing the regulations relating to the construction of buildings in the metropolis, shall not, nor shall any provision therein contained, apply to any buildings erected or to be erected by or with the sanction of the Commissioners for the Exhibition of 1851 on any lands belonging to them, and purchased in pursuance of any power vested in them by Charter or Act of Parliament, with the exception of such streets or blocks of buildings as may be erected by them or with their sanction, as private dwelling-houses.

Short title.

2. This act may be cited for all purposes as the "Metropolitan Building Amendment Act, 1861."

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METROPOLITAN BUILDING ACT, 1869.

32 & 33 Vict. c. 82.

An Act to amend the Metropolitan Building Act, 1855. [9th August, 1869.

18 & 19 Vict. c. 122.

Whereas by the Metropolitan Building Act, 1855, various powers for the regulation and supervision of buildings in the metropolis are given to the Metropolitan Board of Works:

And whereas by part two of the same act certain powers over dangerous structures are given to the Commissioners of Police of the metropolis, and it is expedient to transfer those powers to the Metropolitan Board of Works:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This act may be cited as "The Metropolitan Building Act, 1869."

Act to be construed with 18 & 19 Vict. c. 122.

2. This act shall be construed as one with the Metropolitan Building Act, 1855, and the acts amending the same.

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Commencement of Act.

3. This act shall come into operation on the first day of October, one thousand eight hundred and sixty-nine, which date is in this act referred to as the commencement of this act.

Transfer of powers over dangerous structures to the Metropolitan Board of Works.

4. The powers given by part two of the Metropolitan Building Act, 1855, to the Commissioners of Police of the metropolis with respect to the survey of and securing and notice respecting structures in a dangerous state, and to taking down, securing, or repairing such structures, and to the recovery of the expenses thereof, and to the appointment of persons and making of regulations for carrying into execution part two of the said act relating to such structures, shall, on the commencement of this act, be transferred to and vest in, and may thereafter be exercised by, the Metropolitan Board of Works; and the expression "the Commissioners" throughout the said part (so far as regards structures situate within the limits of the said act, and not within the city of London) shall mean the Metropolitan Board of Works.

Expenses of Metropolitan Board of Works.

5. All payments directed by part two of the Metropolitan Building Act, 1855, as amended by this act, to be made by the Metropolitan Board of Works in respect of any structure situate within the limits of that act, and not within the city of London,

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and all expenses incurred by the said Board in carrying into execution part two of the said act, shall be deemed to be part of their expenses in carrying into execution the said act, and shall be raised and paid accordingly.

All payments directed by part two of the said act as amended by this act to be made to the Metropolitan Board of Works, shall be made in the same manner in which payments are made to the Board in the ordinary course of their business (*a*).

Part of 18 & 19 Vict. c. 122, repealed.

6. So much of the Metropolitan Building Act, 1855, as is set out in the third column of the schedule to this act is hereby repealed.

(*a*) See ss. 67, 68 of the principal act, and sect. 158 et seq. of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120).

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SCHEDULE (*b*).

Date.	Title.	Part repealed.
18 & 19 Vict. c. 122.	An Act to amend the laws relating to the construction of buildings in the metropolis and its neighbourhood.	The following words in s. 70: "but "when such structure is situate "elsewhere, it shall mean 'the "'commissioners of police of the "'metropolis,' or such one of them "as may be authorized by one of "Her Majesty's Principal Secre- "taries of State to act in the "matter of this Act." The following words in sect. 75: "and in the cases of pay- "ments in respect of any struc- "ture situated elsewhere within "the limits of this Act be made "by or to the receiver of metro- "politan police." The following words in sect. 81: "subject to the approval of one "of Her Majesty's Principal "Secretaries of State;" and the following words in the same section: "and all expenses in- "curred by them not hereby "otherwise provided for shall, in "the case of expenses incurred by "the said commissioners of police, "be deemed to be expenses in- "curred by them in respect of "the police force of which they "are commissioners, and be pay- "able accordingly."

(*b*) The most material of the repealed words will be found italicised in their places in the sections.

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METROPOLITAN BUILDING ACT, 1871.

34 & 35 VICT. c. 39.

An Act to amend the Metropolitan Building Act, 1855, *by adding to the exemptions from Part I. of the Act the Buildings of the New Foreign Cattle Market on the site of Deptford Dock.*

[13th July, 1871.

WHEREAS the mayor, aldermen, and commons of the city of London (hereinafter called the Corporation) have undertaken to carry out the provisions of Part III. of the
32 & 33 Vict. c. 70. Contagious Diseases (Animals) Act, 1869, and have for that purpose purchased from the Lords of the Admiralty the site of Deptford Dockyard on which to erect market buildings:

And whereas the Corporation are proceeding to erect such buildings, and it is expedient that the same should be exempt from the operation of Part I. of the Metropolitan Building Act, 1855:

18 & 19 Vict. c. 122. Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual

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and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This act may be cited for all purposes as "The Metropolitan Building Act, 1871."

Buildings of New Foreign Cattle Market exempted from Part I. of 18 & 19 Vict. c. 122.

2. The buildings already erected and that may be hereafter erected on the site of Deptford Dockyard for a new cattle market are hereby exempted from Part I. of the Metropolitan Building Act, 1855.

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METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878.

41 & 42 Vict. c. 32.

An Act to amend the Metropolis Management Act, 1855, *the Metropolitan Building Act,* 1855, *and the acts amending the same respectively.*

[22nd July, 1878.

Whereas the provisions of the several acts now in force within the Metropolis are insufficient for duly regulating the erection and extension of houses and buildings in close proximity to certain roads, passages, and ways, and it is expedient that for such purpose further and better provisions should be made:

And whereas with a view to protect the public frequenting theatres and music halls within the Metropolis from danger from fire it is expedient that provisions such as are in this act contained should be made for empowering the Metropolitan Board of Works (in this act referred to as "the Board") to cause alterations in existing theatres and music halls to be made in certain cases, and

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to make regulations with respect to the position and structure of new theatres and certain new music halls:

And whereas it is expedient to make provisions with respect to the making, filling up, and preparation of the foundations and sites of houses and buildings to be erected within the Metropolis, and with respect to the quality of the substances to be used in the formation or construction of the sites, foundations, and walls of such houses and buildings with a view to the stability of the same, the prevention of fires, and for purposes of health:

And whereas it is expedient to make further and better provisions with respect to the payment of expenses incurred by the Board in relation to dangerous structures:

And whereas for the purposes aforesaid it is expedient to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the acts amending the same respectively: 18 & 19 Vict. c. 120. 18 & 19 Vict. c. 122.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

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PRELIMINARY.

Short title.

1. This act may be cited for all purposes as "The Metropolis Management and Building Acts Amendment Act, 1878."

Limits of Act. 18 & 19 Vict. c. 120.

2. This act shall extend and apply to the Metropolis as defined by the Metropolis Management Act, 1855.

Division of Act into three parts.

3. This act shall consist of three parts.

PART I.

Interpretation.

4. In this part of this act—

"Roadway."

The term "roadway" in relation to any road, passage, or way shall mean the whole space open for traffic, whether carriage traffic and foot traffic or foot traffic only:

"Centre of the roadway."

The term "centre of the roadway" in relation to any road, passage, or way existing at the time of the passing of this act or thereafter formed shall mean the centre of the roadway of such road, passage, or way as existing immediately before the time when first after the passing of this act or the formation of the same any house or building fronting towards or abutting upon such road, passage, or way was begun to be constructed or extended:

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The term "the prescribed distance" shall mean twenty feet from the centre of the roadway where such roadway is used for the purpose of carriage traffic, and ten feet from the centre of the roadway where such roadway is used for the purposes of foot traffic only. "The prescribed distance."

5. The Metropolis Management Act, 1855, and the acts amending the same, and this part of this act shall be construed together as one act: Provided always, that nothing in this act shall be held to limit or restrict the powers now vested in the Commissioners of Sewers of the city of London, or in any body or person elsewhere within the Metropolis, by an act passed in the session of Parliament held in the fifty-seventh year of the reign of King George the Third, intituled "An Act for better paving, improving, and regulating the streets of the Metropolis and removing and preventing nuisances and obstructions therein." Metropolis Management Acts and this part of Act to be construed as one Act. 18 & 19 Vict. c. 120. 57 Geo 3, c. xxix.

6. From and after the passing of this act no house or building begun to be constructed after the passing of this act shall be constructed or begun to be constructed, and no house or building shall be extended or begun to be extended, in such manner that the external wall or front of any such house or building, or, if there be a forecourt or other space left in front of any such house As to erection of houses or buildings at less than prescribed distance from centre of roads, passages, or ways being highways.

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or building, the external fence or boundary of such forecourt or other space, shall be at a distance less than the prescribed distance from the centre of the roadway of any road, passage, or way, whether a thoroughfare or not, being a highway, without the consent in writing of the Board: Provided always, that the Board may, in any case where they think it expedient, consent to the construction, formation, or extension of any house, building, forecourt, or space at a distance less than the prescribed distance from the centre of the roadway of any such road, passage, or way, and at such distance from the centre of such roadway, and subject to such conditions and terms (if any) as they may think proper to sanction.

In every case where any such house, building, forecourt, or space is constructed, formed, or extended, or is begun to be constructed, formed, or extended, in contravention of the provisions of this section, at a distance from the centre of the roadway of any such road, passage, or way as aforesaid less than the prescribed distance, or than such other distance as may have been sanctioned by the Board, or contrary to the conditions and terms (if any) subject to which such sanction was obtained, the Board may serve a notice upon the owner or occupier of the said house, building, forecourt, or

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space, or upon the builder or person engaged in constructing, forming, or extending the same, requiring him to comply with the provisions of this section, and to cause such house, building, forecourt, or space, or any part thereof, to be set back so that the external wall of such house or building, or the external fence or boundary of such forecourt or space, shall be at a distance not less than the prescribed distance from the centre of the roadway of such road, passage, or way as aforesaid, or at such distance and according to such conditions and terms (if any) as the Board may have sanctioned.

Provided always, that the preceding provisions of this section shall not affect the construction or extension of any house or building within the limits of any area which may have been lawfully occupied by any house or building at any time within two years before the passing of this act, or the construction or extension of any house or building lawfully in course of construction or extension at the time of the passing of this act; and provided also, that the construction or extension of any house or building in or abutting upon any street existing, formed, or laid out for building at the time of the passing of this act may be begun and completed in like manner in every

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respect as if the preceding provisions of this section had not been made (*a*).

As to erection of houses or buildings at less than prescribed distance from centre of roads, passages, or ways not being highways.

7. Where after the passing of this act any house or building begun to be constructed after the passing of this act is constructed or is begun to be constructed, or any house or building is extended or begun to be extended, in such manner that the external wall or front of any such house or building, or, if there be a forecourt or other space left in the front of any such house or building, the external fence or boundary of such forecourt or space, is at a distance from the centre of the roadway of any road, passage, or way (not being a highway) less than the prescribed distance or less than such other distance as may have been sanctioned by the Board as hereinafter provided, or where, in relation to any such house, building, or forecourt, or space constructed, formed, or extended at such less distance than the prescribed distance with the sanction of the Board as aforesaid, the conditions or terms (if any) subject to which such sanction was obtained have not been complied with, or the time during which such sanction was limited to continue has expired, then and in every such case, where it is intended that such road, passage, or

(*a*) The provisions of this section do not apply to the City of London, s. 26.

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way shall become a highway, a written notice to that effect shall be served upon the Board, and thereupon the Board may at any time within two months after the receipt of such notice serve a notice upon the owner or occupier of such house, building, forecourt, or space, or the builder or person engaged in constructing, forming, or extending the same, requiring him to cause the same, or any part thereof, to be set back so that the external wall or front of such house or building, or the external fence or boundary of such forecourt or space, shall be at a distance not less than the prescribed distance from the centre of the roadway of such road, passage, or way, or at such distance and according to such conditions and terms (if any) as the Board may have sanctioned, and unless and until such first-mentioned notice has been given to the Board and such last-mentioned notice (if any) has been complied with, such road, passage, or way shall not become a highway.

The Board may consent to the construction, formation, or extension of any house, building, forecourt, or space at any lesser distance than the prescribed distance from the centre of the roadway of any such road, passage, or way (not being a highway) as aforesaid, to be specified in such consent,

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or to the continuance of any house, building, forecourt, or space constructed, formed, or extended at such lesser distance, or to the continuance thereof for a limited time only, to be specified in such consent, in such cases and subject to such terms and conditions (if any) as they may think proper.

Provided always, that the preceding provisions of this section shall not affect the construction or extension of any house or building within the limits of any area which may have been lawfully occupied by any house or building at any time within two years before the passing of this act, or the construction or extension of any house or building lawfully in course of construction or extension at the time of the passing of this act (*b*).

Proceedings in case of default in compliance with requirements of notice.

8. In case any owner, occupier, builder, or person during twenty-eight days after the service of any notice under the preceding provisions of this part of this act neglects or refuses to comply with the requirements of such notice, or after the expiration of such period fails to carry out or complete the works necessary for such compliance with all reasonable despatch, the Board may cause complaint thereof to be made before a

(*b*) The provisions of this section do not apply to the City of London, s. 26.

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justice of the peace, who shall thereupon issue a summons, requiring such owner, occupier, builder, or person to appear at a time and place to be stated in the summons to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice shall make an order in writing on such owner, occupier, builder, or person directing him to comply with the requirements of such notice within such time as such justice may consider reasonable, and such justice shall also make an order for the payment of the costs incurred up to the time of hearing, and of hearing; and in case such owner, occupier, builder or person makes default in complying with the requirements of such notice within the time limited by such order, he shall be liable to a penalty of not less than forty shillings and not more than five pounds, and to a further penalty of not less than ten shillings and not more than forty shillings for each day during which such default continues after the first day after the expiration of the time limited by such order for compliance with the requirements of such notice: Provided always, that this section shall not apply to any noncompliance with the notice of the Board in the case of an intended highway

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where the same shall not be opened as a highway (*c*).

Streets, roads, &c. formed for foot traffic not to be used without consent of Board for carriage traffic unless widened.

9. No street, road, passage, or way (being a highway) formed or laid out for foot traffic only after the passing of this act shall, except with the consent of the Board, be used for the purposes of carriage traffic, unless the space open for foot traffic and carriage traffic be of the full width of forty feet where there are houses or buildings on each side thereof, or, where there are houses or buildings only on one side thereof, unless there be a distance of not less than twenty feet from the centre of the space open for foot traffic and carriage traffic and the external walls or fronts of such houses or buildings, or, if there be forecourts or other spaces left in front of such houses or buildings, the external fences or boundaries of such forecourts or other spaces; and in case any person alters any such street, road, passage, or way, so that it may be used for any traffic other than foot traffic, contrary to the provisions of this section, or takes up or removes any post, bar, rail, flagstone, or knowingly does any act, matter, or thing to facilitate the use of the same for traffic other than foot traffic, contrary to the provisions of this section, he shall for every

(*c*) The provisions of this section do not apply to the City of London, s. 26.

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such offence be liable to a penalty not exceeding fifty pounds.

Streets, roads, &c., formed for foot traffic before passing of Act not to be used without consent of justice for carriage traffic unless widened.

10. No street, road, passage, or way (being a highway) formed or laid out for foot traffic only before the passing of this act shall be used for the purposes of carriage traffic for any longer period than seven consecutive days without the consent of a justice, unless the space open for foot traffic and carriage traffic be of the full width of forty feet where there are houses or buildings on each side thereof, or, where there are houses or buildings only on one side thereof, unless there be a distance of not less than twenty feet from the centre of the space open for foot traffic and carriage traffic and the external walls or fronts of such houses or buildings, or, if there be forecourts or other spaces left in front of such houses or buildings, the external fences or boundaries of such forecourts or other spaces, and any justice may grant such consent as aforesaid, or may do so subject to such terms and conditions as he may think fit; provided that twenty-eight days previous notice of any such application to a justice shall be served upon the Board, and the Board may appear at the time and place fixed for hearing such application and be heard thereon. In case any person alters any such street, road, passage, or way, so that it may be used for

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any traffic other than foot traffic, contrary to the provisions of this section, or to any conditions imposed by any such justice as aforesaid, or takes up or removes any post, bar, rail, flagstone, or knowingly does any act, matter, or thing to facilitate the use of the same for traffic other than foot traffic, contrary to the provisions of this section, he shall for every such offence be liable to a penalty not exceeding twenty pounds.

Power to Board in certain cases to require proprietors of theatres and certain music halls in use at the time of the passing of this Act to remedy structural defects.

11. Whenever it appears to the Board that any house or other place of public resort within the metropolis which was at the time of the passing of this act authorised to be kept open for the public performance of stage plays, and which is kept open for such purpose, under the authority of letters patent from her Majesty, her heirs and successors or predecessors, or of a licence granted by the Lord Chamberlain of her Majesty's Household for the time being, or by justices of the peace, or that any house, room or other place of public resort within the metropolis, containing a superficial area for the accommodation of the public of not less than five hundred square feet, which was at the time of the passing of this act authorised to be kept open, and which is kept open, for dancing, music, or other public entertainment of the like kind, under the authority of a licence granted by any

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court of quarter sessions, is so defective in its structure that special danger from fire may result to the public frequenting the same, then and in every such case the Board may, with the consent of the Lord Chamberlain in the case of theatres under his jurisdiction, and of her Majesty's Principal Secretary of State in all other cases, if in the opinion of the Board such structural defects can be remedied at a moderate expenditure, by a notice in writing require the owner of such house, room, or other place kept open for any of the purposes aforesaid, under such authority as aforesaid, to make such alterations therein or thereto as may be necessary to remedy such defects, within a reasonable time to be specified in such notice; and in case such owner fails to comply with the requirements of such notice within such reasonable time as aforesaid, he shall be liable to a penalty not exceeding fifty pounds for such default, and to a further penalty of five pounds for every day after the first day after the expiration of such reasonable time as aforesaid during which such default continues: Provided always, that any such owner may, within fourteen days after the receipt of any such notice as aforesaid, serve notice of appeal against the same upon the Board, and thereupon such appeal shall be referred to

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an arbitrator to be appointed by her Majesty's First Commissioner of Works at the request of either party, who shall hear and determine the same, and may, on such evidence as he may think satisfactory, either confirm the notice served by the Board, or may confirm the same with such modifications as he may think proper, or refuse to confirm the same, and the decision of such arbitrator with respect to the requirements contained in any such notice, and the reasonableness of the same, and the person by whom and the proportions in which the costs of such arbitration are to be paid, shall be final and conclusive and binding upon all parties.

In case of an appeal against any such notice, compliance with the requirements of the same may be postponed until after the day upon which such appeal shall be so decided as aforesaid, and the same, if confirmed in the whole or in part, shall only take effect as and from such day.

Power to Board to make regulations with respect to new theatres and certain new music halls for protection from fire.

12. The Board may from time to time make, alter, vary, and amend such regulations as they may think expedient with respect to the requirements for the protection from fire of houses or other places of public resort within the metropolis to be kept open for the public performance of stage plays, and of houses, rooms, or other

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places of public resort within the metropolis containing a superficial area for the accommodation of the public of not less than five hundred square feet, to be kept open for public dancing, music or other public entertainment of the like kind, under the authority of letters patent from her Majesty, her heirs or successors, or of licences by the Lord Chamberlain of her Majesty's Household, or by any justices of the peace, or by any court of quarter sessions, which may be granted for the first time after the passing of this act; and may by such regulations prescribe the requirements as to position and structure of such houses, rooms, or places of public resort which may, in the opinion of the Board, be necessary for the protection of all persons who may frequent the same against dangers from fires which may arise therein or in the neighbourhood thereof; provided that the Board may from time to time in any special case dispense with or modify such regulations, or may annex thereto conditions if they think it necessary or expedient so to do.

The Board shall, after the making, altering, varying, or amending of any such regulations, cause the same to be printed, with the date thereof, and a printed copy thereof shall be kept at the office of the Board, and all persons may at all reasonable times

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inspect such copy without payment, and the Board shall cause to be delivered a printed copy, authenticated by their seal, of all regulations for the time being in force to every person applying for the same, on payment by such person of any sum not exceeding five shillings for every such copy.

A printed copy of such regulations, dated and authenticated by the seal of the Board, shall be conclusive evidence of the existence and of the due making of the same in all proceedings under the same, without adducing proof of such seal or of the fact of such making.

From and after the making of any such regulations it shall not be lawful for any person to have or keep open any such house, room, or other place of public resort for any of the purposes aforesaid, unless and until the Board grant to such person a certificate in writing under their seal, to the effect that such house, room, or other place was on its completion in accordance with the regulations made by the Board in pursuance of the provisions of this act for the time being in force, and in so far as the same are applicable to such house or other place, and to the conditions (if any) annexed thereto by the Board.

In case any such house, room, or place

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of public resort is opened or kept open by any person for any of the purposes aforesaid, contrary to the provisions of this enactment, such person shall be liable to a penalty not exceeding fifty pounds for every day on which such house or place of public resort is so kept open as aforesaid.

Provisional licence for new premises.

13. A person interested in any premises about to be constructed, or in course of construction, which are designed to be licensed and used within the metropolis for the public performance of stage plays, or for public dancing, music, or other public entertainment of the like kind, may apply to the licensing authority for the grant of a provisional licence in respect of such premises. The grant of such provisional licence shall, in respect of the discretion of the licensing authority and procedure, be subject to the same conditions as those applicable to the grant of a like licence which is not provisional. A provisional licence so granted shall not be of any force until it has been confirmed by the licensing authority; but the licensing authority shall confirm the same on the production by the applicant of a certificate by the Board that the construction of the premises has been completed in accordance with the regulations and conditions made by the Board as hereinbefore provided, and on being satisfied

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that no objection can be made to the character of the holder of such provisional licence (*d*).

PART II.

Interpretation. "Foundations." "Site."

14. In this part of this act—

The term "foundations" shall mean the space immediately beneath the footings of a wall:

The term "site" in relation to a house, building, or other erection shall mean the whole space to be occupied by such house, building, or other erection between the level of the bottom of the foundations and the level of the base of the walls.

18 & 19 Vict. c. 122, &c., and this part of this act to be construed as one act.

15. The Metropolitan Building Act, 1855, and the acts amending the same, and this part of this act shall be construed together as one act.

Power to board to make byelaws with respect to sites and foundations.

16. The Board may from time to time make, alter, vary, amend, and repeal such byelaws as they may think expedient with respect to the following matters; (that is to say,)

(1.) The foundations of houses, buildings, and other erections, and the sites

(*d*) The provisions of this section do not apply to the City of London, s. 26.

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of houses, buildings, and other erections to be constructed after the passing of this act, and the mode in which and the materials with which such foundations and sites shall be made, formed, excavated, filled up, prepared, and completed for securing stability, the prevention of fires, and for purposes of health:

(2.) The description and quality of the substances of which walls are authorised to be constructed by section twelve of the Metropolitan Building Act, 1855 (*a*), for securing stability, the prevention of fires, and for purposes of health: 18 & 19 Vict c. 122, s. 12.

(3.) The duties of district surveyors in relation to such foundations and sites and substances, and for the guidance and control of such district surveyors in the exercise and discharge of such duties:

(4.) The regulation of the amounts of the fees to be paid to such district surveyors in respect of any duties imposed upon them by any such byelaws or by this act.

The Board may further provide by any byelaw that in any case in which the Board

(*a*) See *ante*, p. 17.

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think it expedient they may dispense with the observance of any byelaw made under the authority of this part of this act, subject to such terms and conditions, if any, as they may think proper; and such terms and conditions may be enforced in like manner in every respect as if the same had been enacted by such byelaw.

The Board may, subject as hereinafter mentioned, further provide for the due observance of such byelaws by enacting therein such provisions as they think fit as to the deposit of plans and sections of public buildings, and buildings to which section fifty-six of the Metropolitan Building Act, 1855, applies, which shall be constructed after the passing of this act, and as to inspection by the district surveyor or other officer of the Board, of houses, buildings, and other erections to be constructed after the passing of this act, and of the plans and sections relating thereto, and as to the power of the Board to cause the removal, alteration, or pulling down of any house, building, or other erection or work done or begun in contravention of any such byelaw, and by imposing such reasonable penalties as they think fit, not exceeding five pounds, for each breach of any such byelaw, and in case of a continuing offence a further penalty not exceeding forty shillings for each day after

18 & 19 Vict. c. 122, s. 56.

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notice of such offence from the Board or district surveyor.

Any byelaw made in pursuance of this section, and any alteration, variation, and amendment made therein, and any repeal of a byelaw, shall not be of any validity until it has been confirmed by one of her Majesty's Principal Secretaries of State.

A byelaw made under this section shall not, nor shall any alteration, variation, or amendment therein or repeal thereof, be confirmed by one of her Majesty's Principal Secretaries of State until the expiration of two months after a copy of the byelaw, together with notice of the intention to apply for confirmation of the same, has been published by the Board, once at least in each of two consecutive weeks, in two or more newspapers circulating in the metropolis, and copies of such byelaw and notice have been delivered at the office of the Royal Institute of British Architects and of the Institution of Surveyors, and to such other societies and persons as such Principal Secretary of State may direct; and any person affected by any such proposed byelaw, or alteration, variation, or amendment in or repeal of any byelaw, may forward notice of his objection to such Secretary of State, who shall take the same into consideration.

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18 & 19 Vict. c. 120, ss. 202, 203.

All the provisions contained in sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, as to the making, publication, and evidence of byelaws made by the Board under the authority of the said act, and as to penalties for breach of the same, and the remission of such penalties, shall extend and apply to the making, publication, and evidence of byelaws made by the Board under the authority of this act, and to penalties for breach of any such byelaws, and to the remission of such penalties.

The following bye-laws have been made by the Board under the provisions of this section :

1.—*Foundations and Sites of Buildings.*

No house, building, or other erection, shall be erected upon any site or portion of any site which shall have been filled up or covered with any material impregnated or mixed with any fæcal, animal, or vegetable matter, or which shall have been filled up or covered with dust, or slop, or other refuse, or in or upon which any such matter or refuse shall have been deposited, unless and until such matter or refuse shall have been properly removed, by excavation or otherwise, from such site. Any holes caused by such excavation must, if not used for a basement or cellar, be filled in with hard brick or dry rubbish.

The site of every house or building shall be covered with a layer of good concrete, at least six inches thick, and smoothed on the upper surface, unless the site thereof be gravel, sand, or natural virgin soil.

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The foundations of the walls of every house or building, shall be formed of a bed of good concrete, not less than nine inches thick, and projecting at least four inches on each side of the lowest course of footings of such walls. If the site be upon a natural bed of gravel, concrete will not be required.

The concrete must be composed of clean gravel, broken hard brick, properly burnt ballast, or other hard material to be approved by the district surveyor, well mixed with fresh burnt lime or cement in the proportions of one of lime to six, and one of cement to eight of the other material.

The foregoing bye-law shall not apply to any building or other erection to be used as a stable or shed, provided that such erection shall not be used for any public entertainment or assembly of persons, or as a dwelling or sleeping place.

2.—*Description and Quality of the Substances of Walls.*

The external walls of every house, building, or other erection, shall, except in the case of concrete buildings, be constructed of good, hard, sound, well-burnt bricks, or of stone, and shall be put together with good mortar or good cement.

Similar bricks shall be used in the portions of party and cross walls below the surface or level of the ground, and above the roof, including the chimney stacks. Cutters or malms may be used in arches over recesses and openings in, or facings of, external walls.

Stone used for the construction of walls must be free from vents, cracks, and sand-holes, and be laid on its natural bed.

The mortar to be used must be composed of fresh burnt lime and clean sharp sand or grit, without earthy matter, in the proportions of one of lime to three of sand or grit.

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The cement to be used must be Portland cement, or other cement of equal quality, mixed with clean sharp sand or grit, in the proportions of one of cement to four of sand or grit.

Burnt ballast or broken brick may be substituted for sand or grit, provided such material be properly mixed with lime in a mortar mill.

Every wall of a house or building shall have a damp course throughout its whole thickness, of asphalte, or other material impervious to moisture. The damp course in external walls shall be at a height of one foot above the level of the ground directly abutting upon the external wall, and in the party or internal walls at a level of not less than six inches below that of the lowest floor.

The top of every party-wall and parapet-wall shall be finished with one course of hard, well-burnt bricks set on edge, in cement, or by a coping of any other waterproof and fire-resisting material, properly secured.

3.—*Duties of District Surveyors.*

It shall be the duty of each district surveyor, on receiving notice of the commencement of any house, building, or other erection, or of any alteration or addition, or on his becoming aware that any house, building, or other erection, or any alteration or addition, is being proceeded with, to see that the provisions of the foregoing bye-laws are duly observed (except in cases where the board may have dispensed with the observance thereof), and to see that the terms and conditions upon which any dispensation may have been granted are complied with.

4.—*Fees to be paid to District Surveyors.*

The district surveyor shall in respect of the erection of any house or other building, be entitled to

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receive the sum of five shillings, the same to be taken and deemed to be a fee due to such district surveyor in respect of the duties imposed upon him by the Metropolis Management and Building Acts Amendment Act, 1878, and these bye-laws; such fee to be payable in the manner and at the time prescribed by section 51 of the Metropolitan Building Act, 1855. The district surveyor shall also, in every case where, in respect of any breach of these bye-laws or of the above act of parliament, an application shall be made by him to a justice, and an order made thereon, be in like manner entitled to recover the sum of ten shillings, in addition to the before-mentioned fee of five shillings.

5.—*Deposit of Plans and Sections.*

On notice being given to a district surveyor of the intended erection, re-erection, alteration of, or addition to a public building, or a building to which section 56 of the Metropolitan Building Act, 1855, applies, it shall be the duty of the person giving such notice to deposit plans and sections of such erection, re-erection, alteration, or addition, with the district surveyor. Such plans and sections shall be of sufficient detail to show the construction.

On notice being given to the district surveyor of the intended erection or alteration of or addition to any house, building, or other erection, other than a public building, the district surveyor may, if he think fit so to do, by notice in writing, require the person giving such notice to produce a plan or plans and sections of any such house, building, or other erection, or of the intended alterations or additions thereto, for his inspection.

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6.—Penalties.

In case of any breach of any of the provisions contained in these bye-laws, the offender shall be liable for each offence to a penalty not exceeding three pounds, and, in each case of a continuing offence, to a further penalty not exceeding thirty shillings for each day after notice thereof from the board or the district surveyor.

In any case, if the board think it expedient, they may dispense with the observance of any of the foregoing bye-laws, or any part thereof, upon such terms and conditions as they may think proper, and in case of the non-observance of any terms and conditions upon which the board may have dispensed with the observance of any of the foregoing bye-laws, then such proceedings may be taken, and such liabilities shall be incurred, as if no dispensation had been granted (*b*).

Sealed by Order,
J. E. WAKEFIELD,
SPRING GARDENS, *Clerk of the Board.*
3rd October, 1879.

L. S.

I confirm the foregoing bye-laws,
R^D. ASSHETON CROSS,
One of Her Majesty's Principal Secretaries of State.

WHITEHALL,
6th October, 1879.

Provisions as to buildings, &c., not erected on foundations or areas conformable with bye-laws, &c.

17. In case any house, building, or other erection begun to be constructed after the passing of this act is constructed or begun to be constructed upon any foundations or site or with any substances which have not

(*b*) See form of dispensation, *post*, p. 206.

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been made, filled up, and prepared, or which are not in description and quality in accordance with the provisions of the byelaws relating thereto made under the authority of this act, or in accordance with the terms and conditions subject to which the Board may have dispensed with the observance of any such provisions, the district surveyor may forthwith, by notice to be served on the occupier of such house, building, or other erection, or on the builder, owner, or other person engaged in constructing any such house, building, or other erection as aforesaid, require him to alter, pull down, or remove such house, building, or other erection, or any part thereof, as he may think proper; and in case any such occupier, builder, owner, or other person, during twenty-eight days after the service of such notice, fails to comply with the requirements of such notice, he shall be liable to a penalty of not less than ten shillings and not more than forty shillings for every day from the time of the service of such notice as aforesaid until such house, building, or other erection, or such part thereof, is altered, pulled down, or removed in accordance with the terms of such notice, and every such penalty shall be in addition to any other penalty for breach of any byelaw.

Provided always, that, notwithstanding

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the imposition and recovery of any penalty, the Board at any time after default in compliance with the requirements of such notice, if they think proper, may cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring such occupier, builder, owner, or other person to appear at a time and place to be stated in the summons to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may make an order in writing authorising the Board to enter and alter, pull down, or remove such house, building, or other erection, or any part thereof, and do whatever may be necessary for such purpose, and also to remove the materials of which the same was composed to a convenient place, and (unless the expenses of the Board be paid to them within fourteen days) subsequently sell the same as they think proper; and all expenses incurred in respect of such entering and altering, pulling down, or removing any such house, building, or other erection, and in disposing of the said materials, may be deducted by the Board out of the proceeds of such sale, and the balance, if any, shall be paid by the Board to the person

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entitled thereto; and in case such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from such occupier, builder, owner, or other person, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this act.

Power to appeal.

18. Any person affected by any notice under the preceding provisions of this part of this act may, within seven days after the service of the same, appeal to the Board.

18 & 19 Vict. c. 120, s. 212.

All such appeals shall stand referred to the Committee of Appeal appointed by the Board under and in pursuance of section two hundred and twelve of the Metropolis Management Act, 1855, for hearing appeals, who may hear and determine the same, and may order the district surveyor, or any other surveyor, to inspect any foundations, site, house, building, or other erection, and may, on such evidence as they think satisfactory, either confirm the notice served by the district surveyor, or may confirm the same with such modifications as they think proper, or refuse to confirm the same.

In case of an appeal against any such notice, compliance with the requirements of

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the same may be postponed until after the day upon which such appeal shall be so decided as aforesaid, and the same, if confirmed in whole or in part, shall only take effect as and from such day.

Amendment of s. 74 of 18 & 19 Vict. c. 122, with respect to sale of dangerous structures.

19. Where under the provisions of the Metropolitan Building Act, 1855, and the acts amending the same, with respect to dangerous structures, any structure is sold for payment of the expenses incurred in respect thereof by the Board in manner prescribed by section seventy-four of the said act, the person to whom the same is sold (hereinafter referred to as "the purchaser"), his agents and servants, may enter upon the land whereon such structure is standing for the purpose of taking down the same and of removing the materials of which the same is constructed, and any person who refuses to admit the purchaser, his agents or servants, upon such land, or impedes him in removing such materials, shall be liable on conviction to a penalty not exceeding ten pounds, and to a further penalty of five pounds for every day after the first day during which such refusal continues.

Where the proceeds of the sale of any such structure under the said seventy-fourth section are insufficient to repay the Board the amount of the expenses incurred by

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them in respect of such structure, no part of the land whereon such structure stands or stood shall be built upon until after the balance due to the Board in respect of such structure shall have been paid to the Board.

Part II. of act not to apply to city of London.

20. Provided always, that the provisions of Part II. of this act shall not extend or apply to the city of London.

PART III.

Power for architect and persons authorised by board, and district surveyor, to enter and inspect theatres, music halls, buildings, and works.

21. The architect of the Board, and any other person authorised by the Board in writing under their seal, may, at all reasonable times after completion or during construction, enter and inspect any house, room, or other place kept open or intended to be kept open for the public performance of stage plays, or for public dancing, music, or other public entertainment, of the like kind affected by any of the provisions of this act, or of any regulations made in pursuance thereof; and the district surveyor of any district may at all reasonable times during the progress and the three months next after the completion of any house, building, erection, or work in such district affected by and not exempted from any of the provisions of this act, or by any byelaw

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made in pursuance of this act, or by any terms or conditions upon which the observance of any such provisions or any of such byelaws may have been dispensed with, enter and inspect such house, building, erection, or work; and if any person refuses to admit such architect, person, or surveyor, or to afford him all reasonable assistance in such inspection, in every such case the person so refusing shall incur for each offence a penalty not exceeding twenty pounds.

Power to owners, &c., to enter houses, &c., to comply with notices or order.

22. For the purpose of complying with the requirements of any notice or order served or made under the provisions of this act, on any owner, builder, or person in respect of any house, building, or other erection, room, or place, such owner, builder, or person, his servants, workmen, and agents, may, after giving seven days' notice in writing to the occupier of such house, building, or other erection, room, or place, and on production of such notice or order, enter such house, building, or other erection, room, or place, and do all such works, matters, and things therein or thereto, or in connexion therewith, as may be necessary; and if any person refuses to admit such owner, builder, or person, or his servants or workmen or agents, or to afford them all reasonable assistance, such person

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shall incur for each offence a penalty not exceeding twenty pounds.

Recovery of penalties.

23. Every penalty imposed by Part I. and Part III. of this act may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolis Management Act, 1855, and the acts amending the same; and every penalty imposed by Part II. of this act, or by any byelaw made in pursuance thereof, may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolitan Building Act, 1855, and the acts amending the same: Provided always, that in any proceedings against any person for more than one penalty in respect of one or more breach or breaches of any provision of this act or of any byelaw made in pursuance of this act, it shall be lawful to include in one summons all such penalties, and the charge for such summons shall not exceed two shillings.

18 & 19 Vict. c. 120.

18 & 19 Vict. c. 122.

Exceptions from Metropolis Management Acts extended to this Act.

24. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolis Management Act, 1855, and the acts amending the same,

18 & 19 Vict. c. 120.

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or of any of the said acts, shall be excepted from the operation of the provisions of this act which are to be construed with such acts, and all exemptions from the provisions of any of the said acts shall extend to such of the provisions of this act as are to be construed as aforesaid with such acts.

Exemptions from Metropolitan Building Acts extended to this Act.

18 & 19 Vict. c. 122.

25. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolitan Building Act, 1855, and the acts amending the same, or of any of the said acts, shall be excepted from the operation of the provisions of this act which are to be construed with such acts, and all exemptions from the provisions of any of the said acts shall extend to such of the provisions of this act as are to be construed as aforesaid with such acts.

Act not to apply to the Inner and Middle Temple, &c.

26. Nothing in this act, or any byelaw of the Board thereunder, shall apply to the Inner Temple, the Middle Temple, Lincoln's Inn, Gray's Inn, Staple Inn, Furnival's Inn, or the close of the collegiate church of Saint Peter, Westminster.

Saving rights of the Crown and the Duchy of Lancaster.

27. Nothing contained in this act, or in any byelaw thereunder made; shall apply to or shall authorise or empower the Board, or any vestry, district board, or district surveyor, to take, use, or in any manner interfere with any land, soil, tenements, or here-

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ditaments, or any rights of whatsoever nature, belonging to or enjoyed or exerciseable by the Queen's most Excellent Majesty in right of her Crown, or in right of her Duchy of Lancaster, without the consent in writing of the commissioners for the time being of her Majesty's Woods, Forests, and Land Revenues, or one of them, on behalf of her Majesty, in right of her Crown, first had and obtained for that purpose (which consent such commissioners are hereby respectively authorised to give), or without the consent in like manner of the Chancellor of the said Duchy, on behalf of her Majesty, in right of her said Duchy; neither shall anything contained in this act, or in any byelaw thereunder made, extend to divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exerciseable by the Queen's Majesty, her heirs or successors, in right of her Crown, or in right of her said Duchy; and nothing contained in Part I. of this act shall apply to the extension of Savoy Street or the bridge which the Chancellor and Council of the said Duchy are by the Metropolitan Board of Works (Various Powers) Act, 1875, empowered to make and construct, or to any house or building within the precinct of the Savoy, or upon the land mentioned in

38 & 39 Vict c. 75.

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section six of the last-mentioned Act, constructed or extended after the passing of this act, in or abutting upon any road, passage, or way existing, formed, or laid out at the time of the passing of this act.

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REGULATIONS

MADE BY THE METROPOLITAN BOARD OF WORKS AT A MEETING HELD AT THE OFFICES OF THE BOARD, SPRING GARDENS, ON FRIDAY, THE 2ND DAY OF MAY, 1879, UNDER THE PROVISIONS OF THE METROPOLIS MANAGEMENT ACTS AMENDMENT ACT, 1878.

I.

These regulations shall apply to all theatres, houses, or places of public resort within the metropolis, to be kept open for the public performance of stage plays, and to all houses, rooms, or other places of public resort within the metropolis, containing a superficial area for the accommodation of the public, of not less than 500 square feet, to be opened or kept open for public dancing, music, or other public entertainment of the like kind under the authority of letters patent from Her Majesty the Queen, her heirs or successors, or of licenses by the lord chamberlain of Her Majesty's household, or by any justice of the peace or by any court of quarter sessions which may be granted for the first time after the 22nd day of July, 1878.

II.

Drawings of theatres, music halls, &c., to be submitted to Metropolitan Board of Works.

Every person who, for the first time after the making of these regulations, may be either desirous of obtaining authority to open any house or other place of public resort, within the metropolis for the public performance of stage plays, or to open any house, room, or other place of public resort within the metropolis containing a superficial area for the

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accommodation of the public of not less than 500 square feet for public dancing, music, or other public entertainment of the like kind, shall give notice of such desire to the Metropolitan Board of Works. The notice must contain a statement as to the nature of the interest of such person in the premises so proposed to be opened, and be accompanied by plans, elevations, and sections of such house, room, or place of public resort, or of the premises of which such house, room, or place of public resort may form part, drawn to a scale of not less than one-eighth of an inch to a foot, and by a block plan showing its position in relation to the premises adjacent, drawn to a scale of not less than one inch to twenty feet, and in the case of new buildings, or of buildings to be adapted as a place of public resort, must be also accompanied by a specification of the works to be executed, describing the materials to be employed and the mode of construction to be adopted, together with such other particulars as may be necessary to enable the board and its officers to judge whether the requirements of these regulations will, when the building has been completed, have been complied with.

The notice must be also accompanied by a detailed statement of the respective numbers of persons proposed to be accommodated in the various portions of such house, room, or place of public resort, and of the area to be assigned to each person, which shall not be less than one foot eight inches by one foot six inches in the gallery, nor less than two feet four inches by one foot eight inches in the other parts of the house, room, or other place of public resort.

III.

Walls. Every such house, room, or place of public resort shall be enclosed with external walls of brick or

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stone, or partly of brick and partly of stone. The thickness of such walls shall not be less than the thickness prescribed by the Metropolitan Building Act, 1855, for walls of similar height and length in buildings of the warehouse class.

IV.

Proscenium wall.

In any house or other place of public resort, for the public performance of stage plays, or where a proscenium shall be erected, the proscenium wall shall be of brick, not less than thirteen inches in thickness, and shall be carried up to a height of three feet above the roof, and be carried down below the stage, to the level of the foundation of the external walls.

No openings shall be formed in the proscenium wall, with the exception of a doorway into the orchestra, and one doorway on each side of the stage for communication with the auditorium. These doorways shall not be more than three feet six inches wide, and shall be closed with iron doors, fixed without woodwork.

The decorations round the proscenium shall be constructed of fire-resisting materials.

V.

Public stair cases, corridors, &c.

The staircases and the floors of the passages, lobbies, corridors, and landings, shall be of fire-resisting materials. Every staircase for the use of the audience shall be supported and enclosed by brick walls. The treads of each flight of stairs shall be of uniform width.

No staircase, internal corridor, or passage-way, for the use of the audience, shall be less than four feet six inches wide. Every staircase, corridor, or passage-way for the use of the audience, and which commu-

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nicates with any portion of the house, intended for the accommodation of a larger number of the audience than four hundred, shall be increased in width by six inches for every additional hundred persons, until a maximum width of nine feet be obtained. Provided always that in every case where the staircases are six feet wide and upwards, a dividing hand-rail shall be provided.

A clear passage or gangway, of not less than three feet wide, shall be reserved round every part appropriated to the audience, except that next the proscenium or place of performance.

VI.

Ironwork. All ironwork used in construction shall be protected against the action of fire in such manner as may be required by the board.

VII.

Means of In all cases where a portion of the audience is to be accommodated over or at a higher level than others of the audience, a separate means of exit, of the width above prescribed for staircases, internal corridors, or passage-ways, and communicating directly with the street, shall be provided from each floor or level. Separate tiers of boxes shall for this purpose be reckoned together as forming one floor or level. One additional exit, at the least, communicating with the different levels, and opening directly into the street, must also be provided.

VIII.

Doors All doors and barriers shall be made to open outwards.

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IX.

Warming. In theatres and places where the auditorium and stage shall be warmed artificially, hot water only, and that at low pressure, shall be used, and the warming apparatus shall be placed in a position to be approved by the board.

X.

Ventilation. All openings for ventilation shall be shown on the plans, and properly described in the specifications. The openings shall be made in such places and in such manner as may be approved by the board.

XI.

Workshops. No workshop, painting-room, or dressing-room shall be formed or constructed over the auditorium, or in the space under the same.

XII.

Scene-docks, &c. No scene-dock, property-room, or store-room shall be permitted within any house, room, or other place of public resort, unless such scene-dock, property-room, or store room be separated from the house, room, or other place of public resort, by brick and fire-proof construction.

XIII.

Water supply. In any case where there are not fire mains on constant supply, there shall be provided on the top of the proscenium wall or at some other place to be approved by the board, two cisterns, each capable of containing at least two hundred and fifty gallons of water for every hundred persons of the audience to be accommodated in the building. Fire mains shall

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be connected with these cisterns and extend round the whole circuit of the building and be fitted with hydrants in such places and manner as may be approved by the board.

XIV.

Gas. All gaspipes shall be made of iron or brass. No white metal pipes shall be used in any part of the building.

XV.

Separation of buildings. In cases in which a house, room, or other place of public resort, forms a part only of a building, such house, room, or other place of public resort, shall be separated from the other parts of the building by proper party walls or party structures.

XVI.

Alterations and additions. Notice shall be given to the board of any intended addition to or structural alteration of any house, room, or other place of public resort, in respect of which the board may have granted a certificate to the effect that such house, room, or other place of public resort, was on its original completion in accordance with the foregoing regulations, or otherwise in compliance with the said act, and the conditions required by the board applicable thereto. Such notice shall be accompanied by plans, elevations and sections, showing such additions or alterations, and also by a specification of the works to be executed, in the same manner as in the case of a new building to be certified for the first time by the board; and the board will if necessary cause a fresh survey of the building to be made.

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XVII.

Inasmuch as by section 12 of the said Act, the board may from time to time, in any special case dispense with or modify its regulations, all applications for dispensation or modification must be in writing, addressed to the board, and contain a statement of the facts of the particular case, and the reasons why it is desired to modify or dispense with these regulations as applicable thereto.

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FORM OF DISPENSATION.

BYE-LAWS MADE 3RD OCTOBER, 1879, UNDER SECTION 16 OF THE ABOVE ACT.

THE Metropolitan Board of Works, on the application of [*Here insert name, address, and description of the applicant*] (*a*), of , in the county of , do hereby, in exercise of the authority vested in them by the above-mentioned act, dispense with the observance by the said applicant of the following byelaw made under the said act in respect of the foundation and site of [*Here describe building*] about to be erected by the applicant in [*Here set out situation of same*], that is to say:—

> No building shall be erected upon any site or portion of any site which shall have been filled up or covered with any material impregnated or mixed with any fæcal, animal or vegetable matter or which shall have been filled up or covered with dust, or slop, or other refuse, or in or upon which any such matter or refuse shall have been

(*a*) See *ante*, p. 188.

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deposited, unless and until such matter or refuse shall have been properly removed, by excavation or otherwise, from such site.

Upon the terms and conditions following, that is to say:—

1.—That all foundations of main walls and parts of the building carrying weight shall be carried down to the solid natural soil, and be in conformity with the plan signed by [*here insert name of architect to applicant*] the architect to the applicant, on [*here insert date of application*] and deposited with the Metropolitan Board of Works at the time of making the above application.

2.—That the entire site of the building shall be covered with a layer of good concrete, at least [*here state thickness*] inches thick.

3.—That, save as hereby expressly dispensed with, the liability of the applicant to observe all the byelaws of the Board made under the said Act shall remain unaffected.

Dated this day of , 188 .

Seal of the Board.

L.S.

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METROPOLIS MANAGEMENT AND BUILDING ACTS (AMENDMENT) ACT, 1882.

45 VICT. c. 14.

An Act to confer further powers upon the Metropolitan Board of Works with respect to Streets and Buildings in the Metropolis. [19th June, 1882.

WHEREAS it is expedient to provide for the better management of the metropolis by conferring further powers upon the Metropolitan Board of Works (in this act referred to as "the Board") with respect to the management of existing streets and the formation of new streets, and the regulation of buildings and structures in the metropolis:

And whereas for the purposes aforesaid it is expedient to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the acts amending the same respectively:

18 & 19 Vict. c. 120.

18 & 19 Vict. c. 122. &c.

And whereas the objects aforesaid cannot be effected without the authority of Parliament:

Be it enacted by the Queen's most Ex-

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cellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Short title.

1. This act may be cited for all purposes as "The Metropolis Management and Building Acts (Amendment) Act, 1882."

Limit of act.

2. This Act shall extend and apply to the metropolis as defined by the Metropolis Management Act, 1855.

Division of act into four parts.

3. This act shall consist of four parts.

PART II.

Metropolis Management Acts and Part II. of act to be construed as one act.

4. The Metropolis Management Act, 1855, and the acts amending the same, and this part of this act shall be construed together as one act.

Power to board to name and number streets in default of vestries, &c. in complying with order of board. 25 & 26 Vict. c. 102.

5. Whenever the Board have transmitted a copy of any order made by them in pursuance of the provisions of the eighty-seventh section of the Metropolis Management Amendment Act, 1862, to any vestry or district board, or to the Commissioners of Sewers of the City of London, and such vestry or district board or commissioners

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have for the space of three calendar months after the receipt of such order failed to perform all or any of the necessary acts or to take all or any of the requisite proceedings for carrying such order into execution, then and in every such case the Board may perform all or any of such necessary acts or take all or any of such necessary proceedings which such vestry or district board or commissioners have failed to perform or take, and for such purpose, and generally for giving effect to the provisions of the said section, as amended by this section, the Board shall have and may exercise all the rights, powers, authorities, and jurisdiction by the said section conferred upon vestries, district boards, and the said commissioners respectively, including the recovery of expenses from owners of houses and buildings, and the said section shall be construed accordingly.

Preventing obstructions of streets.

6. In case any person not being lawfully authorised knowingly erects or places, or causes to be erected or placed, any post, rail, fence, bar, obstruction, or encroachment whatsoever in, upon, over, or under any street, or alters or interferes with any street in such a manner as to impede or hinder the traffic for which such street was formed or laid out from passing over the same, he shall (in addition to any other pro-

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ceeding to which he may be liable therefor) be liable to a penalty not exceeding ten pounds for every such offence, and to a further penalty not exceeding forty shillings for every day on which such offence is continued after the day on which he shall have received notice in writing from the Board to remove such post, rail, fence, bar, obstruction, or encroachment, and to reinstate or restore such street to its former condition; and the Board may, at the expiration of two days after giving such notice as aforesaid, demolish or remove any such post, rail, fence, bar, obstruction, or encroachment, and reinstate or restore such street to its former condition, and recover the expenses thereof in like manner as if the same were a penalty imposed by this part of this act.

Provisions as to new streets.

7. Where after the passing of this act it is intended by any person to form or lay out any road, passage, or way for building as a street for the purposes of carriage traffic or of foot traffic only, in such manner that such road, passage, or way will not afford direct communication between two streets, such person shall, at least three months before such road, passage, or way is begun to be so formed or laid out, make an application to the Board giving notice of such intention, and setting out a plan of the pro-

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posed street, with such particulars in relation thereto as may be required by the Board, and if it appears to the Board that it is expedient that such road, passage, or way should not be formed or laid out in manner aforesaid, or that such road, passage, or way should be formed or laid out in manner aforesaid subject to any conditions which the Board may prescribe, the Board may, by order made at any time before the expiration of the said period of three months, decline to sanction the formation or laying out of such road, passage, or way in manner aforesaid, or may sanction the formation or laying out of such road, passage, or way in manner aforesaid subject to such conditions as they may prescribe, and thereupon, and until the Board shall otherwise direct, such road, passage, or way shall not be formed or laid out for building as a street in manner aforesaid where the Board have declined their sanction, or shall not be formed or laid out for building as a street in manner aforesaid, except in accordance with the conditions prescribed, where the Board have given their sanction subject to such conditions.

Any person forming or laying out, or commencing to form or lay out, or keeping open any road, passage, or way so formed or laid out in manner aforesaid contrary to the provisions of this section shall for every such

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offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding twenty shillings for every day on which the offence is continued after the day on which the first penalty is incurred.

Provided always, that in case the said person so intending to form or lay out any road, passage, or way as aforesaid, considers that any of the conditions prescribed by the Board are unreasonable, then the said person so objecting to the said conditions may appeal to the police magistrate for the district in which the said road, passage, or way is situate, and his decision shall be final upon the question.

Provisions restricting in certain cases the laying out of streets for foot traffic only.

8. Where after the passing of this act it is intended by any person to form or lay out any road, passage, or way for building as a street for foot traffic only, such person shall, at least three months before such road, passage, or way is begun to be so formed or laid out, make an application to the Board giving notice of such intention, and setting out a plan of the proposed street, with such particulars in relation thereto as may be required by the Board, and if it appears to the Board that it is expedient that such road, passage, or way should not be formed or laid out for foot traffic only, or that such road, passage, or way should be formed or laid out for foot traffic only subject to any

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conditions which the Board may prescribe, the Board may, by order made at any time before the expiration of the said period of three months, decline to sanction the forming or laying out of the same for foot traffic only, or may sanction the formation or laying out of such road, passage, or way for foot traffic only subject to such conditions as they may think proper to prescribe, and thereupon, and until the Board shall otherwise direct, such road, passage, or way shall not be formed or laid out for building as a street for foot traffic only, where the Board have declined their sanction, or shall not be formed or laid out for building as a street for foot traffic only, except in accordance with the conditions prescribed, where the Board have given their sanction subject to such conditions.

Any person forming or laying out, or commencing to form or lay out, or keeping open any such road, passage, or way for foot traffic only contrary to the provisions of this section shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding twenty shillings for every day on which such offence is continued after the day on which the first penalty is incurred.

Provided always, that in case the said person so intending to form or lay out any

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road, passage, or way as aforesaid, considers that any of the conditions prescribed by the Board are unreasonable, then the said person so objecting to the said conditions may appeal to the police magistrate for the district in which the said road, passage, or way is situate, and his decision shall be final upon the question.

Board may annex and enforce conditions as to space to be left open where building is erected beyond the general or regular line of building.

9. Where the Board consent, in writing, under section seventy-five of the Metropolis Management Amendment Act, 1862, to the erection by any person of a building or part of a building or erection in any street, place, or row of houses beyond the general or regular line of buildings in such street, place, or row of houses, the Board may annex to such consent, if they think fit, any conditions they may think proper as to the amount of land in front of such building, part of a building, or erection which shall be dedicated to or left open for the use of the public; and where the Board have annexed to such consent to the erection of such building, part of a building, or erection any such condition, then and in every such case such condition shall within three months after the erection of such building, part of a building, or erection be fulfilled, and if such person fails to fulfil such condition within such period as aforesaid he shall be liable to a penalty not exceeding five pounds, and to

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a further penalty not exceeding forty shillings for every day upon which such condition continues to be unfulfilled after the day on which the first penalty is incurred.

Provided always, that notwithstanding the imposition and recovery of any penalty under this section, the Board, at any time after default in the fulfilling of any such condition, may cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring the owner or occupier of such building, part of a building, or erection, at a time and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice shall make an order in writing on such owner or occupier directing the demolition of such building, part of a building, or erection, or so much thereof as may be beyond such general or regular line, within such time as such justice shall consider reasonable, and shall also make an order for the costs incurred up to the time of the hearing; and in default of the building, part of a building, or erection complained of being demolished, within the time limited by such order, the Board may forthwith enter the premises to which the

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order relates and demolish the building, part of a building, or erection complained of, and do whatever may be necessary to execute such order, and may also remove the materials of which the same was composed to a convenient place and (unless the expenses of the Board be paid to them within fourteen days after such removal) sell the same as they think proper; and all expenses incurred by the Board in executing such order and in disposing of the said materials may be deducted by the Board out of the proceeds of such sale, and the balance, if any, shall be paid by the Board on demand to the person entitled thereto; and in case such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from such owner or occupier, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this part of this act.

Power to Board to exercise powers of vestries and district boards under s. 75 of 25 & 26 Vict. c. 102 with respect to buildings,

10. The powers conferred by the seventy-fifth section of the Metropolis Management Amendment Act, 1862, upon the vestry of any parish and the board of works of any district with respect to any building or erection situate in such parish or district in

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&c., erected beyond general line of buildings.

case such building or erection has been erected, or begun to be erected or raised, beyond the general line of buildings in the street, place, or row of houses in which the same is situate without the consent in writing of the Board, or contrary to the terms and conditions on which such consent may have been granted (including the powers for the recovery of expenses), shall extend and apply to and may be exercised by the Board in like manner as by such vestry or board of works.

PART III.

The Metropolitan Building Act and Part III. of Act to be construed as one Act.

11. The Metropolitan Building Act, 1855, and the acts amending the same, and this part of this act shall be construed together as one act.

oard may impose condition requiring emoval of iron or other buildings of a temporary character within certain period.

12. Whenever an application is made to the Board by any person stating his desire to erect in any place any iron or other building of a temporary character to which the rules of the Metropolitan Building Act, 1855, and the acts amending the same, are inapplicable, the Board may, in case of their approval of the plan and particulars of such building, limit the period during which such building shall be allowed to remain in such place, and may make such approval

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subject to such conditions as to the removal of such building or otherwise as they may think fit; and if at the expiration of the period limited by the Board during which such building is allowed to remain in such place such building is not removed in accordance with such conditions, the Board may, by notice in writing, require the occupier or owner of such building to remove such building within a reasonable time, to be specified in such notice, and in case such occupier or owner fails to comply with the requirements of such notice within such time as aforesaid he shall be liable to a penalty not exceeding five pounds for such default, and to a further penalty not exceeding forty shillings for every day on which such default continues after the day on which the first penalty is incurred.

Provided always, that notwithstanding the imposition and recovery of any penalty, the Board may, at any time after default in complying with the requirements of such notice, if they think proper, cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring such occupier or owner to appear, at a time and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in

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such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may make an order, in writing, authorising the Board to enter upon the land upon which such building is situated, and to remove or take down the same, and do whatever may be necessary for such purpose, and also to remove the materials of which the same is composed to a convenient place and (unless the expenses of the Board be paid to them within fourteen days after such removal) sell the same as they think proper; and all expenses incurred in respect of any such order, and of entering and removing or taking down any such building, and in disposing of the said materials may be deducted by the Board out of the proceeds of such sale, and the balance (if any) shall be paid by the Board on demand to the person entitled thereto; and in case such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from the occupier or owner of such building, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this part of this act.

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Temporary or movable wooden structures or erections not to be erected without license of Board.

13. It shall not be lawful for any person to erect or set up in any place any wooden structure or erection of a movable or temporary character (unless the same be exempt from the operation of the first part of the Metropolitan Building Act, 1855) without a license in writing first had and obtained from the Board for the erection or setting up of such structure or erection in such place, and every such license may contain such conditions with respect to such structure or erection and the time for which it is to be permitted to continue in such place as the Board may think expedient, and if any person erects or sets up any such structure or erection in any place without having had and obtained such license to erect or set up the same in such place, or makes default in observing any of the conditions contained in such license, or is guilty of any breach of such conditions, he shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day on which any such structure or erection continues erected or set up, without such license being had and obtained, or upon which such default or breach continues after the day on which the first penalty is incurred.

Provided always, that a license shall not be required in the case of any wooden struc-

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ture or erection of a movable or temporary character erected by a builder for use during the construction, alteration, or repair of any building, unless the same is not taken down or removed immediately after such construction, alteration, or repair.

As to open spaces to dwellings.

14. Every new building begun to be erected upon a site not previously occupied in whole or in part by a building, after the passing of this act, intended to be used wholly or in part as a dwelling-house shall, unless the Board otherwise permit, have directly attached thereto and in the rear thereof an open space exclusively belonging thereto of the following extent:

Where such building has a frontage not exceeding 15 feet the extent of the open space shall be 150 square feet at the least;

Where such building has a frontage exceeding 15 feet, but not exceeding 20 feet, the extent of the open space shall be 200 square feet at the least;

Where such building has a frontage exceeding 20 feet, and not exceeding 30 feet, the extent of the open space shall be 300 square feet at the least; and

Where such building has a frontage exceeding 30 feet the extent of the open

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space shall be 450 square feet at the least.

Every such open space shall be free from any erection thereon above the level of the ceiling of the ground floor story, and shall extend throughout the entire width (exclusive of party or external walls) of such building at the rear thereof.

The provisions of this enactment shall be in addition to and shall form part of the rules of the Metropolitan Building Act, 1855, and the said act shall be construed accordingly.

Conversion of houses, &c., into public buildings.

15. Where it is proposed to convert or alter any building erected for a purpose other than a public purpose into a public building within the meaning of the Metropolitan Building Act, 1855, and the acts amending the same, such conversion or alteration, and the public building thereby formed, including the walls, roofs, floors, galleries, and staircases of the same, shall be carried into effect and constructed respectively in such manner as may be approved by the district surveyor, or in the event of disagreement may be determined by the Board, and the provisions of the Metropolitan Building Act, 1855, and of the acts amending the same, with respect or applicable to the construction of public buildings shall extend and apply to such alteration or con-

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version as though such alteration or conversion were the construction of a public building.

Amendment of provisions of 18 & 19 Vict. c. 122, s. 21, with respect to hot water pipes.

16. From and after the passing of this Act the restrictions imposed by the twenty-first section of the Metropolitan Building Act, 1855 (*a*), with respect to the distance at which pipes for conveying hot water or steam may be placed from any combustible materials shall not apply in the case of pipes for conveying hot water or steam at low pressure.

Dilapidated and neglected buildings.

17. Where a building or structure is ruinous, or so far dilapidated as thereby to have become and to be unfit for use or occupation, or is from neglect or otherwise in a structural condition prejudicial to the property in or the inhabitants of the neighbourhood, the Board may make complaint thereof to a justice of the peace, who shall thereupon issue a summons requiring the owner and occupier of such building or structure, hereinafter referred to as a "neglected structure," to appear, at a time and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the

(*a*) See *ante*, p. 28.

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same is heard, such justice may, if he sees good cause, order the owner or, on his default, the occupier to take down or repair or rebuild the neglected structure or any part thereof, or to fence in the ground upon which the same stands, or any part thereof, or otherwise to put the same or any part thereof into a state of repair and good condition, to the satisfaction of the Board, within a reasonable time to be fixed by the order, and may also make an order for the costs incurred up to the time of the hearing.

If the order is not obeyed the Board may, with all convenient speed, enter upon the neglected structure or such ground as aforesaid and execute the order.

Where the order directs the taking down of a neglected structure or any part thereof, the Board, in executing the order, may remove the materials to a convenient place and (unless the expenses of the Board under this section in relation to such structure be paid to them within fourteen days after such removal) sell the same as they think fit.

All expenses incurred by the Board under this section in relation to a neglected structure may be deducted by the Board out of the proceeds of such sale, and the balance (if any) shall be paid by the Board

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on demand to the person entitled thereto, and in case such neglected structure or some part thereof is not taken down, and such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from the owner of such neglected structure, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this act, but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

Provisions for better securing payments to Board of expenses incurred by Board in respect of dangerous or neglected structures.

18. Where under the provisions of the Metropolitan Building Act, 1855, and the acts amending the same, with respect to dangerous structures, or under the provisions of this act with respect to neglected structures, the Board have incurred any expenses in respect of any dangerous structure or any neglected structure, and have not been paid or have not recovered the same, the Board may, after giving notice of their intention to do so, in manner hereinafter mentioned, to the owner of such dangerous or neglected structure, apply to a justice of the peace, at the time and place named in such notice, for an order fixing

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the amount of such expenses and the costs of such application, and directing that no part of the land upon which such dangerous or neglected structure stands or stood shall be built upon, or that no part of such neglected structure, if repaired or rebuilt, shall be let for occupation until after payment to the Board of the amount of such expenses and costs as fixed by such order; and such justice, on proof of such expenses having been incurred by the Board, and after hearing the parties appearing before him, may make such order as aforesaid, and thereupon and until payment to the Board of the amount fixed by such order no part of such land shall be built upon, and no part of such neglected structure so repaired or rebuilt shall be let for occupation

Every such order shall be signed in duplicate by such justice, and one of such orders shall be retained by the officer of the Court in which such justice made the same and the other of such orders shall be kept at the office of the Board.

The Board shall keep at their principal office a register of all such orders as may from time to time be made under the authority of this section, and shall keep the same open for inspection by all persons at all reasonable times, and any such order not entered in such register within ten days after

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the making of the same shall cease to be of any force or effect.

A notice of the intention to make an application for any such order may be printed or written, or partly printed and partly written.

As to summonses and notices in the cases of dangerous and neglected structures.

19. Any summons or notice under this act with respect to a dangerous or neglected structure shall be served or given in accordance with the provisions of section ninety-eight of the Metropolitan Building Act, 1855 (*b*): Provided always, that where the owner of any such dangerous or neglected structure is not known to or cannot be found by the Board or their officers, any such summons or notice shall be deemed to be duly served or given if a copy of the same be posted in a conspicuous place on such dangerous structure or neglected structure, or on the land whereon it stands or stood, at least two months before the time named in such summons or notice for the hearing of such complaint or for the making of such application.

Proceedings as to irregular buildings, &c.

20. Proceedings with respect to any irregular building or structure shall not be prejudiced or affected by the removal or falling in of the roof of such building or structure.

(*b*) *Ante*, p. 111.

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Provisions as to settlement of differences between building and adjoining owners.

21. Where in any case not specially provided for by the Metropolitan Building Act, 1855, a difference has arisen between a building owner and an adjoining owner in respect of any matter arising under the said Act, and both parties have concurred in the appointment of one surveyor for the settlement of such difference in manner prescribed by section eighty-five of the Metropolitan Building Act, 1855 (*c*), then and in every such case, if such surveyor refuses or for seven days neglects to act, or dies, or becomes incapable to act before he has made his award, the matters in dispute shall be determined, under the provisions of the said section, in the same manner as if such single surveyor had not been appointed.

When any such difference as aforesaid has arisen and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, and a third surveyor has been selected, then and in every such case, if such third surveyor refuses or for seven days neglects to act, or before such difference is settled dies or becomes incapable to act, the two surveyors shall forthwith, after such refusal, neglect, death, or incapacity, select another third surveyor in his place, and every third sur-

(*c*) *Ante*, p. 91.

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veyor so to be selected as aforesaid shall have the same powers and authorities as were vested in the third surveyor at the time of such his refusal, neglect, death, or incapacity as aforesaid.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then, if the two surveyors so appointed refuse or for seven days after request of either party neglect to select a third surveyor or another third surveyor in the event of the refusal or neglect to act, death, or incapacity of the third surveyor for the time being, one of Her Majesty's Principal Secretaries of State may, on the application of either party, select some fit person to act as third surveyor, and every surveyor so selected as aforesaid shall have the same powers and authorities as if he had been selected as a third surveyor by the two surveyors so appointed by the parties.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then and in every such case, if before such difference is settled any such surveyor so appointed as aforesaid by either party dies or becomes incapable to act, the party by whom

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such surveyor was appointed may appoint in writing some other surveyor to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other surveyor may proceed ex parte, and the decision of such remaining or other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred, and every surveyor so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former surveyor at the time of such his death or disability as aforesaid.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then and in every such case, if either of the surveyors refuses or for seven days neglects to act, the other surveyor may proceed ex parte, and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred.

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PART IV.

Recovery of penalties.

22. Every penalty imposed by Part II. of this act may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolis Management Act, 1855, and the acts amending the same (*a*); and every penalty imposed by Part III. of this act may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolitan Building Act, 1855, and the acts amending the same (*b*): Provided always, that in any proceedings against any person for more than one penalty in respect of one or more breach or breaches of any provision of this act, or of any byelaw made in pursuance of this act, it shall be lawful to include in one summons all such penalties, and the charge for such summons shall not exceed two shillings.

18 & 19 Vict. c. 120.

18 & 19 Vict. c. 122.

Exceptions from Metropolis Management Act

23. Her Majesty's royal palaces, and all buildings, works, and ground excepted from

(*a*) *Post*, p. 242, n. (*g*). (*b*) *Ante*, p. 114.

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the operation of the Metropolis Management Act, 1855, and the acts amending the same (*c*), or of any of the said acts, shall be excepted from the operation of the provisions of this act which are to be construed with such acts, and all special exemptions from the provisions of any of the said acts shall extend to such of the provisions of this act as are to be construed as aforesaid with such acts.

extended to this Act. 18 & 19 Vict. c. 120.

24. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolitan Building Act, 1855, and the acts amending the same (*d*), or of any of the said acts, shall be excepted from the operation of the provisions of this act which are to be construed with such acts, and all special exemptions from the provisions of any of the said acts shall extend to such of the provisions of this act as are to be construed as aforesaid with such acts.

Exceptions from Metropolitan Building Acts extended to this Act. 18 & 19 Vict. c. 122.

25. Nothing in this act shall apply to the Inner Temple, the Middle Temple, Lincoln's Inn, Gray's Inn, Staple Inn, Furnival's Inn, or the close of the collegiate church of Saint Peter, Westminster.

Act not to apply to the Inner and Middle Temple, &c.

26. The provisions of sections six, seven, eight, and thirteen of this act shall not apply to the city of London and the liberties thereof.

Ss. 6, 7, 8 and 13 not to apply to city of London.

(*c*) *Post*, p. 267. (*d*) *Ante*, p. 9.

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Expenses of Act.

27. All the costs, charges, and expenses of and incident to the applying for, obtaining, and passing of this act shall be paid by the Board.

FORMS.

LICENSE.

45 VICTORIA, CHAPTER 14 (*a*).

WHEREAS, of , in the county of , has applied to the Metropolitan Board of Works (hereinafter called the "Board") to erect at , in the county of , a building of a temporary character, to which the rules of the Metropolitan Building Act, 1855, and the Acts amending the same are inapplicable.

AND WHEREAS the Board have agreed to allow such temporary building to be erected at , aforesaid, for a period of years, and have approved of the plan and particulars thereof, upon the following conditions:—

(*a*) See *ante*, p. 208.

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1.—That such building, situate as aforesaid, shall be taken down, and the materials of which it was constructed be removed, and the site upon which it was erected restored to its former condition, at the end of the said term of years.

2.—That the Board may, in their discretion, grant an extension of time for the removal of such building, such extension of time to be endorsed on, and form part of this license.

In witness whereof the said Board have hereunto affixed the Seal of the Board this day of , 188 .

N.B.—The board may, by notice in writing, after the expiration of the above notice, require the occupier or owner of such temporary building, to remove such building within a reasonable time, to be specified in such notice, and in case such occupier or owner fails to comply with the requirements of such notice within such time as aforesaid, he shall be liable to a penalty not exceeding five pounds for such default, and to a further penalty not exceeding forty shillings for every day on which such default continues after the day on which the first penalty is incurred.

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ACCEPTANCE OF LICENSE.

I ACCEPT the license dated the day of , for a building of a temporary character, to be erected at in the county of , by me, upon the terms and conditions therein set forth.

Dated this day of , 188 .

To the

METROPOLITAN BOARD OF WORKS.

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APPENDIX.

THE METROPOLIS MANAGEMENT ACT, 1855 (*a*).

18 & 19 VICT. c. 120.

75. It shall not be lawful to erect any house or other building in any parish mentioned in schedule (A.) to this act, or in any district mentioned in schedule (B.) to this act, or to rebuild any house or building within any such parish or district which has been pulled down to or below the floor commonly called the ground floor, or to occupy any house or building so newly built or rebuilt, unless a drain and such branches thereto and other connected works and apparatus and water supply as hereinbefore mentioned be constructed and provided to the satisfaction of the surveyor of the vestry of such parish or board of works for such

No house to be built without drains constructed to the satisfaction of the vestry or district board (*b*).

(*a*) This is the short title given by s. 111 of the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102).

(*b*) See *Austin* v. *St. Mary, Lambeth*, 27 L. J. Ch. 283.

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district, of such materials, of such size, at such level, and with such fall as they may direct, so that the same shall be available for the drainage of the lowest floor of such house or building, and of its several floors or stories, and also of its areas, water-closets, privies and offices (if any), which drain shall lead from such house or building, or the intended site of such house or building, to such sewer, already made or intended to be constructed near thereto, as the vestry or board shall direct and appoint, or if there be no such sewer existing or intended to be constructed within one hundred feet of any part of the intended site of such house or building, then to such covered cesspool or other place, not being under any dwelling-house, as the vestry or board shall direct; and whenever any house or building is rebuilt as aforesaid, the level of the lowest floor of such house or building shall be raised sufficiently to allow of the construction of such a drain and such branches thereto and other works and apparatus as are hereinbefore required, and for that purpose the levels shall be taken and determined under the direction of the vestry or district board (*c*).

(*c*) Refer to the first portion of the Building Act, which prescribes how houses are to be built. To these statutory requirements will be added those as

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Notice of buildings to be given to the vestry or district board before commencing the same.

76. Before beginning to lay or dig out the foundation of any new house or building (*d*) within any such parish or district, or to rebuild any house or building therein, and also before making any drain for the purpose of draining directly or indirectly into any sewer under the jurisdiction of the vestry or board of or for any such parish or district, seven days' notice in writing shall be given to the vestry or board by the person intending to build or rebuild such house or building or to make such drain; and every such foundation shall be laid at such level as will permit the drainage of such house or building in compliance with this act, and as the vestry or board shall order, and every such drain shall be made in such direction, manner, and form and of such materials and workmanship, and with such branches thereto and other connected works and apparatus and water supply as hereinbefore mentioned, and as the vestry or board shall order, and the making of every such drain shall be under the survey and control of the vestry or board; and the vestry or district board shall make their order in relation to the matters aforesaid

to drainage under this clause. Compare 38 & 39 Vict. c. 55, s. 25 (The Public Health Act).

(*d*) A house built with foundations placed on the surface without any digging out, seems to be within this section. (*The Poplar District Board* v. *Knight*, 28 L. J. M. C. 37.)

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and cause the same to be notified to the person from whom such notice was received within seven days after the receipt of such notice, and in default of such notice, or if such house, building, or drain, or branches thereto or other connected works and apparatus and water supply be begun, erected, made or provided in any respect contrary to any order of the vestry or board made and notified as aforesaid, or the provisions of this act, it shall be lawful for the vestry or board to cause such house or building to be demolished or altered, and to cause such drain or branches thereto and other connected works and apparatus and water supply to be relaid, amended or re-made, or, in the event of omission, added, as the case may require, and to recover the expenses thereof from the owner thereof in the manner hereinafter provided (*e*).

Penalty on erecting or

81. (*f*) After the commencement of this

(*e*) This clause not only embraces the drainage, but also ordains a notice to the vestry or district board of the parish or district when any *foundation of a new house or building* is laid or digged out, or when any house or building is *rebuilt*, and likewise before any drain is made. The act then goes on to regulate the sewerage. See, however, sect. 89.

(*f*) Under this section the vestry or district board may require the owner or occupier of a house to provide a sufficient water-closet; and if he does not comply with such requirement, the vestry or district board may cause it to be constructed, and recover the

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act it shall not be lawful newly to erect any house, or to rebuild any house pulled down to the extent aforesaid, within any parish mentioned in schedule (A.) to this act, or any district mentioned in schedule (B.) to this act, without a sufficient watercloset or privy and ashpit furnished with proper doors and coverings, and also furnished as regards the watercloset with suitable water supply and water supply apparatus, and with suitable trapped soilpan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof; and whosoever shall offend against this enactment shall be liable to a penalty not exceeding twenty pounds; and if at any time it appear to the vestry or district board of such parish or district that any house in any such parish or district, whether built before or after the commencement of this act, is without a sufficient watercloset or privy and ashpit furnished with proper doors and coverings, and with other apparatus and works as aforesaid, the vestry or district board shall, in case the same can be provided without disturbing any building, give notice in writing to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall

rebuilding houses without proper watercloseta, &c.

Power to vestry, &c., to require owners, &c., to provide sufficient watercloseta, &c.

expenses from the owner (*The Vestry of St. Luke's, Middlesex* v. *Lewis*, 31 L. J. M. C. 73.)

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be specified in such notice, to provide a sufficient watercloset or privy and ashpit so furnished as aforesaid, or either of them as the case may require; and if such notice be not complied with, it shall be lawful for the vestry or district board to cause to be constructed a sufficient watercloset or privy and ashpit, or either of them, or do such other works as the case may require, and to recover the expenses incurred by them in so doing from the owner of such house in manner hereinafter provided: Provided always, that where a watercloset or privy has been and is used in common by the inmates of two or more houses, or if in the opinion of the vestry or district board a watercloset or privy may be so used, they need not require the same to be provided for each house (*g*).

If owners fail, vestry, &c., to cause the work to be done at their expense.

(*g*) This clause again must be referred to the first portion of the Building Act. By sect. 227, the penalty mentioned in it is recoverable under 11 & 12 Vict. c. 43, s. 103. But the procedure is directed by the 230th and following sections of the Management Act itself. The time, however, for recovering such penalties is now extended to six months, *i.e.* six calendar months, by s. 107 of the Management Act of 1862, which repeals s. 233 of the earlier Act. Compare 38 & 39 Vict. c. 55 (The Public Health Act), s. 252. The statute passes on, after sect. 81, to further arrangements respecting the drainage. By sect. 89, the vestry or district board may transfer their powers and duties as to sewerage to the Metropolitan Board of Works, constituted under a previous section (sect. 43) of the same act. Under such

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Vaults and cellars under streets not to be made without the consent of the vestry or board.

101. No vault, arch or cellar shall be made under any street without the consent of the vestry or district board of the parish or district in which the same is situate; and all such vaults, arches and cellars hereafter to be made within any parish or district mentioned in either of the schedules (A.) and (B.) to this act shall be substantially made, and so as not to interfere or communicate with any drain or sewer under the control of any vestry or district board, or of the Metropolitan Board of Works, without their consents respectively first obtained; and if any vault, arch or cellar be made contrary to this provision, it shall be lawful for the vestry or district, or for the Metropolitan Board of Works, to fill up or alter the same, and the expenses incurred thereby shall be paid by the owner of such vault, arch or cellar.

Vaults, &c., under streets to be repaired by owners or occupiers.

102. All vaults, arches and cellars (*h*) made either before or after the commencement of this act under any street in any

circumstances, it would seem that the notice under the 76th section should be given to the Metropolitan Board, thus entrusted with the powers and duties assigned to the vestry, &c.; for the 76th section has special reference to matters connected with drainage.

(*h*) Cellars, to come within the meaning of this section, must be a complete construction in themselves, arched over, and having roofs independent of the pavement (*Hamilton* v. *Vestry of St. George, Hanover Square*, L. R. 9 Q. B. 42; 43 L. J. M. C. 41.

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parish or district mentioned in either of the schedules (A.) and (B.) to this act, and all openings into the same in any such street, shall be repaired and kept in proper order by the owners or occupiers of the houses or buildings to which the same respectively belong; and in case any such vault, arch or cellar be at any time out of repair, it shall be lawful for the vestry or district board of such parish or district to cause the same to be repaired and put into good order, and to recover the expenses thereof from such owner in the manner hereinafter provided.

Provisions as to the occupation of underground rooms as dwellings.

103. Any room of a house, the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, and any cellar, where such room or cellar is, or has been, occupied separately as a dwelling at or before the time of the passing of this act, may continue to be so let or occupied if it possess the following requisites (that is to say),

If there be an area not less than three feet wide in every part from six inches below the floor of such room or cellar to the surface or level of the ground adjoining to the front, back or external side thereof, and extending the full length of such side;

If such area, to the extent of at least five feet long and two feet six inches wide,

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be in front of the window of such room or cellar, and be open or covered only with open iron gratings;

If there be in every such room or cellar an open fireplace, with proper flue therefrom;

If there be a window opening of at least nine superficial feet in area, which window opening must be fitted with a frame filled in with glazed sashes, of which at the least four and a half superficial feet must be made to open for ventilation;

And no such room nor any cellar not so let or occupied as aforesaid at or before the time of the passing of this act shall be so let or occupied unless it possess the following requisites (that is to say),

Unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof;

Unless the same be at least one foot of its height above the surface of the footway of the street adjoining or nearest to the same;

Unless there be outside of and adjoining the same room or cellar, and extending along the entire frontage thereof and upwards, from six inches below the level of the floor thereof up to the surface of the said footway, an open area

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at least three feet wide in every part;

Unless the same be effectually drained and secured against the rise of effluvia from any sewer or drain;

Unless there be appurtenant to such room or cellar the use of a watercloset or privy and an ashpit furnished with proper doors and coverings kept and provided according to the provisions of this act;

Unless the same have a fireplace with a proper chimney or flue;

Unless the same have an external glazed window of at least nine superficial feet in area clear of the frame, and made to open in such manner as is approved by the surveyor of the Metropolitan Board of Works:

Provided always, that in any area adjoining a room or cellar there may be placed steps necessary for access to such room or cellar, and over or across any such area there may be steps necessary for access to any building above the room or cellar to which such area adjoins, if the steps in such respective cases be so placed as not to be over or across any such external window:

And whosoever lets, occupies or continues to let, or knowingly suffers to be occupied, any room or cellar contrary to this act, shall

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be liable for every such offence to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied; and every room or cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this act; and every district surveyor acting under the act of the session holden in the seventh and eighth years of Her Majesty, chapter eighty-four, or under any act repealing or amending the same, shall, without any fee or reward, report periodically and otherwise, as the said Metropolitan Board may order, to such Board all cases in which rooms or cellars are occupied contrary to this enactment in the district of such surveyor, and also to the respective vestries and district boards, all such cases occurring within such parts of his district as may be within their respective parishes and districts; but nothing herein contained shall be construed to disable other persons from enforcing this enactment, and taking proceedings for penalties thereunder.

Powers to district surveyors to enter underground rooms and cellars.

104. For the purpose of enforcing the enactment lastly hereinbefore contained, it shall be lawful for any such district surveyor, or for any other person, having reasonable grounds for believing that any room or cellar is occupied contrary to such enactment, to demand admission to inspect the same at

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If admission refused, justice may issue an order.

any time between nine o'clock in the morning and six o'clock in the evening; and if admission be not granted, any justice having jurisdiction in the place where such room or cellar is situate may, on oath before him of belief that such room or cellar is occupied contrary to the said enactment, by order under his hand authorise such district surveyor or other person to enter into and inspect such room or cellar between the hours aforesaid (*i*).

Owners, &c., to remove future projections, on notice from vestry or district board.

119. If any porch, shed, projecting window, step, cellar door or window, or steps leading into any cellar or otherwise, lamp, lamp post, lamp iron, sign, sign post, sign iron, showboard, window shutter, wall, gate, fence or opening, or any other projection or obstruction placed or made against or in front of any house or building after the commencement of this act, shall be an annoyance

(*i*) These clauses may be compared with section 23 of the Building Act (p. 30), where they are referred to in a note. The expenses, under sect. 102, are recoverable under the provisions of sects. 225, 226. They may be demanded of the occupier, who, in his turn, is to reimburse himself out of the rent due from him. But he is not to be chargeable beyond the amount of the rent due, unless he refuses to disclose, on application to him by the vestry or district board, the amount of such rent and the name and address of his landlord. However, no contract between the landlord and tenant is to be affected. See sects. 217, 218, 219. The penalty, under sect. 103, is recoverable under 11 & 12 Vict. c. 43, s. 103. (Sect. 227.) See the note to sect. 81, p. 76, *ante*.

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in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street in their parish or district, it shall be lawful for the vestry or district board to give notice in writing to the owner or occupier of such house or building to remove such projection or obstruction, or to alter the same, in such manner as the vestry or board think fit; and such owner or occupier shall within fourteen days after the service of such notice upon him remove such projection or obstruction, or alter the same in the manner directed by the vestry or board; and if the owner or occupier of any such house or building neglect or refuse, within fourteen days after such notice, to remove such projection or obstruction, or to alter the same, in the manner directed by the vestry or board, he shall forfeit any sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during which such projection or obstruction continues after the expiration of such fourteen days from the time when he may be convicted of any offence contrary to the provisions hereof (*k*).

Penalty for neglect.

(*k*) The clauses respecting projections may be read in conjunction with the 26th section of the Building Act (*ante*, p. 32), and the penalty under this section (119) is recoverable under 11 & 12 Vict. c. 43, s. 103.

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Vestry or district board may remove existing projections, and make compensation for the same.

120. It shall be lawful for every vestry and district board, if any projection or obstruction which has been placed or made against or in front of any house or building in any such street before the commencement of this act shall be an annoyance as aforesaid, to cause the same to be removed or altered as they think fit (*l*): Provided always, that the vestry or board shall give notice in writing of such intended removal or alteration to the owner or occupier against or in front of whose house or building such projection or obstruction shall be, seven days before such removal or alteration shall be commenced, and shall make reasonable compensation to every person who shall incur any loss or damage by such removal, excepting in cases where the obstruction or projection may now be removable under any act, in which case no compensation shall be made.

Hoards to be erected during repairs.

121. Every person who shall build or begin to build, or to take down or begin to take down, any house, building or wall, or alter or repair, or begin to alter or repair, the outward part of any house, building or wall, shall, in all cases in which the footway

(Sect. 227). And see the note to sect 81, p. 242, *ante*, and s. 75 of the act of 1862.

(*l*) See *Le Neve* v. *Mile End Old Town*, 27 L. J. Q. B. 208.

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is thereby obstructed or rendered inconvenient, cause to be put up a proper and sufficient hoard (*m*) or fence, with a convenient platform and handrail, if there be room enough for the same, to serve as a footway for passengers outside of such hoard or fence, and shall continue such hoard or fence, in such cases as aforesaid, with such platform and handrail, standing and in good condition, to the satisfaction of the vestry or district board of the parish or district in which such house, building or wall is situate, during such time as may be necessary for the public safety or convenience, and shall, in all cases in which the same is necessary to prevent accidents cause such hoard or fence to be well lighted during the night; and every such person who fails to put up such hoard or fence and such platform, with such handrail as aforesaid, or who does not, whilst the said hoard or fence is standing, keep the same well lighted during the night, shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during the continuance of such default.

Penalty on not erecting hoards.

(*m*) Refer to the note concerning hoards, *ante*, p. 68, note (*g*); and as to the penalty, see sect. 227, which prescribes its recovery under 11 & 12 Vict. c. 43, s. 103, and the note to sect. 81.

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No hoard to be erected without licence from vestry or district board.

122. It shall not be lawful for any person to erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards or other things by way of inclosure, for the purpose of making mortar, or depositing bricks, lime, rubbish or other materials, without a licence in writing first had and obtained from the clerk or surveyor of the vestry or district board of the parish or district in which such street is situate; and every such licence shall state the place where and the purpose for which such hoard or fence, scaffold or inclosure, is to be set up or made, and the size thereof, and the time for which it is to be permitted to continue.

If hoard be erected or materials be deposited in any manner otherwise than to the satisfaction of the vestry or district board, the same may be removed.

123. If any person erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish or other materials, without a licence from the vestry or district board, or do any such act as aforesaid, in any other manner than as permitted by such licence, or continue the same beyond the time stated in such licence, or fail to keep any hoard, fence, platform or handrail in good repair, he shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding

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forty shillings for every day during the continuance of such offence; and it shall be lawful for the vestry or board to cause such hoard, fence, scaffold or inclosure to be pulled down, and the materials thereof, and also all the bricks, mortar, lime or other building materials, or other matters or things contained within any such inclosure, to be removed and deposited in such place as the vestry or board may think fit, and to be kept until the charges of pulling down and removing the same be paid to the vestry or board; and in case the same be not claimed and the said charges paid within the space of eight days, next after such seizure thereof, it shall be lawful for the vestry or board to order the same to be sold, and by and out of the proceeds of such sale to pay such charges, rendering any surplus to the owner or other person by law entitled thereto; and in case the proceeds of such sale be insufficient to cover such charges, and the charges of selling and disposing of such materials, matters and things, the deficiency shall be repaid by the owner of such materials, matters and things, to the vestry or district board; on demand (*n*).

(*n*) The *penalty* is recoverable under 11 & 12 Vict. c. 43, s. 103. (Sect. 227.) The *deficiency*, consisting of *charges*, and mentioned as being payable on demand, will probably come under the head of *costs* in the

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Public buildings and void spaces now rateable (except churches and burial grounds) to continue rateable.

162. All such hospitals, public schools and other public buildings, dead walls and void spaces of ground as are now by law rateable to any rate for the costs and charges of paving or repairing the pavements within any parochial or other district, either separately or jointly with any other object or objects (except only places of religious worship and burial grounds, or places which have been used for burial grounds, and are not used for any other purpose), shall be rateable under this act to the like extent and for the like objects or purposes as they may now be rated, and the rates to be made in respect of such objects or purposes shall be payable by the persons now liable to pay the same, and be recoverable in like manner, as any rate to which such buildings and spaces of ground are now rateable as aforesaid in respect of the like objects or purposes.

Bye-laws.

Power to Metropolitan Board of Works to make bye-laws.

202. The Metropolitan Board of Works and every district board and vestry respectively may from time to time make, alter and repeal bye-laws for all or any of the

225th section, and be recoverable accordingly under that and the 226th section. But see the note to sect. 104, and s. 104 of the Act of 1862.

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purposes following; (that is to say), for regulating the business and proceedings at their meetings and of committees appointed by them, the appointment and removal of their officers and servants, and the duties, conduct and remuneration of such officers and servants; and the said Metropolitan Board may also from time to time make, alter and repeal bye-laws for regulating the plans, level, width, surface inclination and the material of the pavement and roadway of new streets and roads, and the plans and levels of sites for building, and for regulating the dimensions, form and mode of construction, and the keeping, cleansing and repairing of the pipes, drains and other means of communicating with sewers and the traps and apparatus connected therewith; for the emptying, cleansing, closing and filling up of cesspools and privies; and for other works of cleansing and of removing and disposing of refuse, and for regulating the form of appeal and mode of proceeding thereon; and generally for carrying into effect the purposes of this act; and every such board and vestry may thereby impose such reasonable penalties as they think fit, not exceeding forty shillings, for each breach of such bye-laws, and in case of a continuing offence a further penalty not exceeding twenty shillings for each day after

Penalty breach of bye-laws.

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notice of the offence from the board or vestry: Provided always, that under every such bye-law it shall be lawful for the justices before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid, or to remit the whole penalty: Provided also, that no bye-laws shall be repugnant to the laws of England or to the provisions of this act; and that no bye-law shall be of any force or effect unless and until the same be submitted to and confirmed at a subsequent meeting of the board or vestry: Provided also, that no penalty shall be imposed by any such bye-law unless the same be approved by one of Her Majesty's principal secretaries of state (*o*).

Power to justices to remit penalties.

Provisions for Protection of Property and Works of Metropolitan and District Boards and Vestries, and Preventing Obstruction in Execution of Works.

Buildings not to be made over sewers without consent (*p*).

204. No building shall be erected in, over or under any sewer vested in the Metropolitan Board of Works, or in any

(*o*) This clause may be compared with s. 57 of the principal act, p. 60, *ante*. Penalties for breach of bye-laws are mentioned in the 227th section as being recoverable under 11 & 12 Vict. c. 43, s. 103; and see the note to sect. 81, p. 240, *ante*.

(*p*) A marsh wall or embankment that keeps back

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vestry or district board, without their consent first obtained in writing, and if any building be erected contrary to this provision, the board or vestry in whom such sewer is vested may demolish the same, and the expenses incurred thereby shall be paid by the person erecting such building (*q*).

Interpretation and Commencement of Act.

250. In the construction of this act "the Metropolis" shall be deemed to include the city of *London*, and the parishes and places mentioned in the schedules (A.), (B.), and (C.) to this act; "the city of *London*" shall be deemed to include all parts now within the jurisdiction of the Commissioners of Sewers for the city of *London;* and the word "Parish" shall include any place mentioned in schedule (A.) to this act, and any place or combination of places mentioned in schedule (B.) to this act, for which one or more member or members is or are to be elected to any district board; the ex-

Interpretation of terms: "the Metropolis:"

"the City of London:"

"Parish:"

the river Thames at high water from inundating the Isle of Dogs, and through which sewers pass which drain the isle at low water, is "a sewer" within the meaning of this section (*Poplar Board of Works* v. *Knight*, 28 L. J. M. C. 37).

(*q*) These expenses are recoverable under sects. 225 and 226, the method of ascertaining the amount, or enforcing the payment, not being provided for by sect. 204. And see the note to sect. 104, p. 248.

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"Overseers of the poor:" pression "the overseers of the Poor" shall include any persons authorised to make and collect or cause to be collected the rate for
"Rates:" the relief of the poor in any parish; any expression referring to any rate or rates raised under this act by the Metropolitan Board of Works or any vestry or district board shall mean the sums and rates authorised to be raised by the said Metropolitan Board and the sums authorised to be raised by any vestry and district board respectively;
"Owner:" the word "Owner" (*r*) shall, except for the purpose of the provision of this act requiring notice to be served on owners or reputed owners of land, before application to one of Her Majesty's principal secretaries of state for his consent to exercise powers of taking land, or any right or easement in or over land, compulsorily, mean the person for the time being receiving the rack-rent of the lands or premises in connexion with which the said word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-
"Street:" rent; the word "Street" shall apply to and include any highway (except the carriageway of any turnpike road), and any road, bridge

(*r*) See *Lady Holland* v. *Kensington Vestry*, L. R. 2 C. P. 565; *London School Board* v. *St. Mary, Islington*, 1 Q. B. D. 65; 45 L. J. M. C. 6.

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(not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage; the word "Drain" shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board; and the word "Sewer" shall mean and include sewers and drains of every description, except drains to which the word "drain," interpreted as aforesaid, applies; and the word "Ashpit" shall include "Dustbin."

"Drain:"

"Sewer:"

"Ashpit."

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SCHEDULE (A).

Part I.

Parishes each electing Two Members of the Metropolitan Board of Works.

Saint Marylebone.
Saint Pancras.
Lambeth.
Saint George, Hanover Square.
Islington, Saint Mary.
Shoreditch, Saint Leonard.

Part II.

Parishes each electing One Member of the Metropolitan Board of Works.

Paddington.
Saint Matthew, Bethnal Green.
Saint Mary Newington, Surrey.
Camberwell.
Saint James, Westminster.
Saint James and Saint John Clerkenwell to be considered as One Parish.
Chelsea.
Kensington, Saint Mary Abbot.

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Saint Luke, Middlesex.
Saint George the Martyr, Southwark.
Bermondsey.
Saint George in the East.
Saint Martin in the Fields.
Hamlet of Mile End Old Town.
Woolwich.
Rotherhithe.
Saint John, Hampstead.

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SCHEDULE (B).

PARISHES UNITED INTO DISTRICTS FOR THE PURPOSES OF THE ACT.

PART I.

Districts each electing One Member of the Metropolitan Board of Works.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Whitechapel District.	Saint Mary, Whitechapel . .	27
	Christchurch, Spitalfields . .	12
	Saint Botolph without Aldgate, in the County of Middlesex . .	6
	Holy Trinity, Minories . . .	1
	Saint Katherine, Precinct of . .	1
	Mile End New Town, Hamlet of .	6
	Liberty of Norton Folgate . .	3
	Old Artillery Ground . . .	1
	Tower, District of	1
	TOTAL . . .	58
Westminster District.	Saint Margaret	30
	Saint John the Evangelist . .	27
	TOTAL . . .	57
Greenwich District.	Saint Paul Deptford, including Hatcham	21
	Saint Nicholas, Deptford . . .	6
	Greenwich	30
	TOTAL . . .	57

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Name of District.	Parishes.	Number of Members to be elected to District Board.
Wandsworth District.	Clapham	18
	Tooting Graveney	3
	Streatham	9
	Saint Mary Battersea, excluding Penge	12
	Wandsworth	9
	Putney, including Roehampton	6
	TOTAL	57
Hackney District.	Hackney	51
	Saint Mary, Stoke Newington	6
	TOTAL	57
Saint Giles District.	Saint Giles in the Fields	27
	Saint George, Bloomsbury	21
	TOTAL	48
Holborn District.	Saint Andrew Holborn above Bars	24
	Saint George the Martyr	9
	Saint Sepulchre, in the County of Middlesex	6
	Saffron Hill, Hatton Garden, Ely Rents, and Ely Place	9
	The Liberty of Glasshouse Yard	1
	TOTAL	49
Strand District.	Saint Anne, Soho	18
	Saint Paul, Covent Garden	9
	Saint John the Baptist Savoy, or Precinct of the Savoy	1
	Saint Mary-le-Strand	3
	Saint Clement Danes	15
	Liberty of the Rolls	3
	TOTAL	49

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Name of District.	Parishes.	Number of Members to be elected to District Board.
Fulham District.	Saint Peter and Saint Paul Hammersmith	24
	Fulham	15
	TOTAL	39
Limehouse District.	Saint Anne, Limehouse	15
	Saint John, Wapping	3
	Saint Paul, Shadwell	6
	Ratcliffe, Hamlet of	12
	TOTAL	36
Poplar District.	All Saints, Poplar	24
	Saint Mary, Stratford-le-Bow	9
	Saint Leonard, Bromley	15
	TOTAL	48
Saint Saviour's District.	Christchurch	15
	Saint Saviour (including the Liberty of the Clink)	24
	TOTAL	39

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PART II.

Districts united for electing One Member of the Metropolitan Board of Works.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Plumstead District.	Charlton next Woolwich . . .	9
	Plumstead	12
	Eltham	6
	Lee	9
	Kidbroke	1
united with	TOTAL . . .	37
Lewisham District.	Lewisham, including Sydenham Chapelry	24
	Hamlet of Penge	3
	TOTAL . . .	27

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PART III.

Parish and District united for electing One Member of the Metropolitan Board of Works.

Name of District.	Parishes.	Number of Members to be elected to District Board.
The parish of Rotherhithe, united with Saint Olave District.	Saint Olave	12
	Saint Thomas, Southwark	1
	Saint John, Horsleydown	15
	TOTAL	28

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SCHEDULE (C.) (*a*).

The Close of the Collegiate Church of Saint Peter.
The Charter House.
Inner Temple.
Middle Temple.
Lincoln's Inn.
Gray's Inn.
Staple Inn.
Furnival's Inn.

(*a*) See Act of 1862 (25 & 26 Vict. c. 102), s. 11.

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THE METROPOLIS MANAGEMENT AMENDMENT ACT, 1862.

25 & 26 VICT. C. 102.

Reports as to underground rooms occupied as dwellings.

* 18 & 19 Vict. c. 120, p. 244, *ante*.

62. Every district surveyor required to report by the one hundred and third section of the firstly-recited act * shall, without fee or reward, report to the Metropolitan Board, and to every vestry and district board in the district in which such surveyor may act, in the months of *June* and *December* in each year, and at all other times when he shall be required so to do by any such board or vestry, all underground rooms or cellars occupied as dwellings within the meaning of the firstly-recited act, that are not built or constructed in conformity with the rules contained in the said section, and shall in such report set forth the exact locality in which such underground rooms or cellars are situate; and in any proceedings taken to recover the penalty under the said one hundred and third section of the said act, such evidence as may give rise to a probable presumption that some person passes the night in such room or cellar shall be evidence, until the contrary be made to appear, that such has been the case.

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Extension of time under sect. 76 of 18 & 19 Vict. c. 120, for making orders by vestries and district boards.

63. Whereas by the seventy-sixth section of the firstly-recited act it is provided that the vestry or district board shall make their order in relation to the matters therein referred to, and cause the same to be notified to the person from whom the notice mentioned in the said section was received within seven days after the receipt of such notice, and it is expedient that the time for making such order should be extended: Be it therefore enacted, that where any notice shall have been given to any vestry or district board pursuant to the said section, it shall be lawful for the surveyor of such vestry or board, if he shall deem it necessary and proper so to do, within three days after the receipt of such notice by the vestry or district board, by writing under his hand directed to and served upon the person giving such notice to require that the building or works referred to therein shall not be proceeded with until after the then next meeting of the said vestry or district board, and until their directions in reference thereto shall have been notified to such person, provided that the order of the said vestry or district board shall be made and notified to the said person at the latest within fifteen days after the receipt of such notice by the vestry or district board; and in case any person shall proceed with any building or works contrary

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to this enactment he shall forfeit and pay to the vestry or district board a sum not exceeding five pounds, and also a further sum of forty shillings for every day during which such offence shall continue, to be recovered by action at law or in a summary manner at the option of the vestry or board.

Where parties neglect to carry out work pursuant to order of vestry, the vestry may recover penalty or do the works.

* 18 & 19 Vic. c. 120.

64. Whereas by the seventy-third, seventy-fourth, seventy-sixth, eighty-fifth, and eighty-sixth sections of the firstly-recited act,* certain works, matters, and things are required to be constructed, made, or executed on the requisition of vestries and district boards by the owners or occupiers of the premises therein referred to; and in case any such owner or occupier refuse or neglect to commence, proceed with, or complete the same, as the case may be, the vestry or district board are authorised to perform and execute such works, matters, and things, and recover the costs incurred thereby in manner therein provided: Be it enacted, that in case of any such neglect or default by any person or persons to comply with the order of any vestry or district board to execute any works, matters, or things under any of the said provisions, the person or persons so offending shall forfeit and pay to the vestry or district board a sum not exceeding five pounds, and also a further sum not exceeding forty shillings for every

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day during which such offence shall continue, to be recovered by action at law or before a justice of the peace in a summary manner, at the option of the vestry or district board; and the vestry or district board may at their discretion either execute or perform any such works, matters, or things, and recover the costs and expenses thereof from the owner of the property as aforesaid, or proceed for and recover the said penalty or penalties; but nothing herein contained shall render any person or persons liable to be proceeded against for the penalty as well as for the costs and expenses of the works.

Penalties in 18 & 19 Vict. c. 120 extended to persons causing offences.

65. The penalties declared by the firstly-recited act in the case of persons committing the offences mentioned therein are hereby extended and made applicable to all persons causing the commission of any such offences, or by whose order or direction any such offences shall have been committed.

Penalty on persons placing buildings or encroachments on sewers.

68. Every person who shall knowingly erect or place any building, wall, bridge, fence, obstruction, annoyance, or encroachment in, upon, over, or under any sewer under the jurisdiction of the Metropolitan Board of Works, or of any vestry or district board, and every person obstructing, filling in, or diverting any sewer or drain under the jurisdiction, survey, or control of the Metropolitan Board, or of any vestry or

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district board, without the previous consent in writing of the board or vestry in whom the same may be vested, shall, in addition to any other proceeding to which he may be liable therefor, forfeit and pay to such respective board or vestry a sum not exceeding twenty pounds for every such offence; and the board or vestry may demolish and remove any such building, wall, bridge, fence, obstruction, annoyance, or encroachment, and perform any works necessary for restoring or reinstating the sewer or other work or thing damaged, and the party erecting such building, wall, bridge, fence, or causing such obstruction, annoyance, or encroachment, shall also pay the expense of removing and abating them respectively, and of reopening, restoring, repairing, or reinstating any sewer or drain obstructed, filled in, closed up, or diverted; and in case of a continuing offence in any of the cases aforesaid the offender shall be liable to a further penalty, not exceeding five pounds, for each day after notice thereof from the Metropolitan Board of Works, or from the vestry or district board, to be recovered by action at law or before any justice of the peace by a summary proceeding, at the option of the board or vestry: Provided always, that nothing herein contained shall extend to prevent or impede the maintenance, repair, or renewal of any

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building or works under which a sewer or drain has been constructed, but so, nevertheless, that such buildings or works shall not injure or obstruct the said sewer or drain.

Penalty on persons interfering with sewers.

69. Any person who shall take up, remove, demolish, or otherwise interfere with any sewer or part of a sewer vested in the Metropolitan Board of Works, or in any vestry or district board, without the previous permission in writing of such board or vestry, or who shall wilfully damage any sewer, bank, defence, wall, penstock, grating, gully, side entrance, tide valve, flap, work, or thing vested in the Metropolitan Board or any vestry or district board, or do any act by which the drainage of the Metropolis or any part thereof may be obstructed or injured, shall for every such offence forfeit and pay to the said Metropolitan Board of Works, or to the vestry or district board aggrieved by any such act, for every such offence a sum not exceeding twenty pounds, and shall also pay to such board or vestry all the expenses of repairing, restoring, reinstating, or amending any sewer or other work or thing so taken up, removed, demolished, damaged, or interfered with, to be recovered by action at law, or before a justice of the peace by a summary proceeding, at the option of the board or vestry.

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Buildings projecting beyond general line when taken down to be set back.

74. In case any building, situated within any of the parishes, districts, or places comprised in the schedules of the firstly-recited act, which shall in any part thereof project beyond the general line of the street in which the same may be situate, or beyond the front of the building, wall, or railing on either side thereof, shall at any time be taken down to an extent exceeding one half of such building, such half to be measured in cubic feet, or shall be destroyed by fire or other casualty, or demolished, pulled down, or removed from any other cause to the extent aforesaid, it shall be lawful for the Metropolitan Board of Works to require the same to be set back to such a line and in such a manner for the improvement of any street as the said board shall direct: Provided that, the said board shall make compensation to the owner of such building for any damage and expenses which he may sustain and incur thereby: Provided also, that this section shall not apply to any building in the places mentioned in schedule (C.) to the Metropolis Local Management Act which does not abut upon any public street or place.

Mode of proceeding with regard to buildings beyond line of street.

75. The one hundred and forty-third section of the firstly-recited act, and the one hundred and fortieth section of the act passed in the seventeenth year of His Majesty King *George* the Fourth, chapter one hun-

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dred and forty-two, intituled *An Act for consolidating the trusts of the several turnpike roads in the neighbourhood of the metropolis north of the River Thames*, are hereby repealed; and in lieu thereof be it enacted, that no building, structure, or erection shall, without the consent in writing of the Metropolitan Board of Works, be erected beyond the general line of buildings in any street, place, or row of houses in which the same is situate, in case the distance of such line of buildings from the highway does not exceed fifty feet, or within fifty feet of the highway when the distance of the line of buildings therefrom amounts to or exceeds fifty feet, notwithstanding there being gardens or vacant spaces between the line of buildings and the highway, such general line of buildings to be decided by the superintending architect to the Metropolitan Board of Works for the time being; and in case any building, structure, or erection be erected, or be begun to be erected or raised, without such consent, or contrary to the terms and conditions on which the same may have been granted, it shall be lawful for the vestry of the parish or the board of works for the district in which such building or erection is situate [or the Metropolitan Board of Works, 45 Vict. c. 14, s. 10] to cause to be made complaint thereof before a justice of the peace, who

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shall thereupon issue a summons requiring the owner or occupier of the premises, or the builder or person engaged in any work contrary to this enactment, to appear at a time and place to be stated in the summons to answer such complaint; and if at the time and place appointed in such summons the said complaint shall be proved to the satisfaction of the justice before whom the same shall be heard, such justice shall make an order in writing on such owner or occupier, builder, or person, directing the demolition of any such building or erection, or so much thereof as may be beyond the said general line so fixed as aforesaid, within such time as such justice shall consider reasonable, and shall also make an order for the payment of the costs incurred up to the time of hearing; and in default of the building or erection complained of being demolished within the time limited by the said order, the said vestry or board shall forthwith enter the premises to which the order relates and demolish the building or erection complained of, and do whatever may be necessary to execute the said order, and may also remove the materials to a convenient place, and subsequently sell the same, as they think fit; and all expenses incurred by the said vestry or board in carrying out the said order and in disposal

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of the said materials may be recovered by the said vestry or board from the owner or occupier of the said premises, or the builder or person engaged in the work, either by action at law or in a summary manner before a justice of the peace, at the option of the said vestry or board, in manner provided by the two hundred and twenty-seventh section of the firstly-recited act as to the recovery of penalties (*a*).

(*a*) The superintending architect to the Metropolitan Board of Works having to decide, under this section, the general line of buildings in any street, place, or row of houses in which any building, structure, or erection is built beyond such general line without the consent in writing of the Metropolitan Board of Works, in case the distance of such line of buildings from the highway does not exceed fifty feet, or within fifty feet of the highway, when the distance of the line of buildings therefrom amounts to or exceeds fifty feet, notwithstanding there being gardens or vacant spaces between the line of buildings and the highway; the following rules have been made by the board:—

1. Persons interested in the buildings objected to are to be heard by the superintending architect.

2. They may be heard on any Thursday before twelve o'clock in the forenoon, on giving two days' notice at the least.

3. A plan to a large scale, or forty-four feet to the inch, will be required to show the line of buildings and projections in the street, place, or row of houses in question. The board may now annex and enforce conditions as to space to be left open where a building is erected beyond the general or regular line of building, see 45 Vict. c. 14, s. 9, *ante*, p. 216.

This section does not apply to ground formerly covered with buildings, unless the owner has relinquished his right of rebuilding on the same site.

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Conditions as to buildings beyond line of street.

76. The Metropolitan Board may, in giving consent for any erection beyond the regular line of the buildings in any street, annex any condition to the consent given by the board, and in case such erection shall not be made in accordance with the consent of the board, or be in any manner altered or raised without their consent, the board may

Auckland (*Lord*) v. *Westminster Board of Works*, L. R. 7 Ch. 597 ; 41 L. J. Ch. 723. In determining the general line of buildings of a street, the architect of the board ought to have regard to the frontage of houses previously existing, and which may be rebuilt, as well as to those still standing, *ibid.*

The certificate of the superintending architect of the board is not absolutely conclusive, but the magistrate is entitled to judge for himself whether the line fixed by such certificate is in fact the general line of buildings in the street. *Simpson* v. *Smith*, L. R. 6 C. P. 87 ; 40 L. J. M. C. 89. When there is a known owner or occupier, the proper person to proceed against is such owner or occupier, and not the builder, and a summons upon the builder is only valid whilst he is engaged in the work. *Brutton* v. *St. George, Hanover Square* (*Vestry*), L. R. 13 Eq. 339 ; 41 L. J. Ch. 134.

The limit of six months for making any complaint for the payment of any penalty for an offence against the act, imposed by s. 107, does not apply to a complaint under s. 75. *Bermondsey* (*Vestry*) v. *Johnson*, L. R. 8 C. P. 441 ; 42 L. J. M. C. 67. The "general line of buildings" referred to in this section exists independently of the certificate of the architect, which merely points it out for the guidance of the architect. *Paddington* (*Vestry*) v. *Snow*, 45 L. T. 475 ; 30 W. R. 46 ; and see *Wandsworth Board of Works* v. *Hall*, L. R. 4 C. P. 85. An appeal to quarter sessions will not lie against the order of a justice directing the demolition of buildings under this section. *Ex parte Elsdon*, 9 Q. B. D. 41 ; 51 L. J. M. C. 94.

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enter and demolish or alter the buildings or structure or any part thereof, and recover all expenses, or may impose any penalty not exceeding forty shillings to be summarily recovered for every day during which any building or structure being a contravention of such condition shall exist after notice from the said board or any officer of the board to remedy the complaint.

Heights of buildings in certain streets.

85. No building, except a church or chapel, shall be erected on the side of any new street of a less width than fifty feet, which shall exceed in height the distance from the external wall or front of such building to the opposite side of such street, without the consent in writing of the Metropolitan Board of Works; nor shall the height of any building so erected be at any time subsequently increased so as to exceed such distance without such consent; and in determining the height of such building the measurement shall be taken from the level of the centre of the street immediately opposite the building up to the parapet or eaves of such building; and every person committing any offence under this enactment shall be liable to a penalty of five pounds, and in case of a continuing offence to a further penalty of forty shillings for every day during which such offence shall continue after notice from the

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said Board, to be recovered by summary proceeding.

Affixing names of streets by vestries and district boards.

87. The one hundred and forty-first section of the firstly-recited act is hereby repealed; and in lieu thereof be it enacted that vestries and district boards shall and may, within the limits of their respective jurisdictions, from time to time cause to be painted or affixed on a conspicuous part of some house or building at or near each end, corner, entrance, or other convenient part of any street in their parish or district, the name of such street, and renew such name whenever it may be obliterated or defaced; and the Metropolitan Board of Works may alter the name of any street to any other name which to such Board may seem fit; and before any name is given to any street, notice of the intended name shall be given to the said Metropolitan Board, and the said Board may, by notice in writing given to the person by whom notice of such intended name has been given to them, at any time within one calendar month after receipt of such notice, object to such intended name; and it shall not be lawful to set up any name to any new street in the metropolis until the expiration of one calendar month after notice thereof has been given as aforesaid to the said Metropolitan Board, or to set up any name objected to as aforesaid; and whenever

Alteration of names by Metropolitan Board, and execution of orders by vestries and district boards.

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the said Metropolitan Board shall, under the power hereinbefore given, have ordered or directed an alteration in the name or names of any street, or of any place or row of houses or in any line of road, they shall transmit a copy of their order directing such alteration to the vestry or district board in whose parish or district such street, place, row of houses, or line of road shall be situate; and such vestry or district board shall thereupon cause to be painted or affixed on a conspicuous part of some house or building, to the satisfaction of the said Metropolitan Board, at or near each end, corner, entrance, or other convenient part of the said street, place, row of houses, or line of road, the altered name or name specified in the order of the Metropolitan Board, and shall perform all other necessary acts for giving effect to such order: and it shall be lawful for the said Metropolitan Board from time to time to order and direct that any row of houses or buildings in any street or in any line of road in the metropolis shall, for the purpose of distinguishing the same, be marked with such number or names as they shall deem convenient and proper for that purpose, and which they shall specify in their order in that behalf; and whenever the said Metropolitan Board have passed any such order as last aforesaid, they shall transmit a copy

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thereof to the vestry or district board in whose parish or district the said street, place, row of houses, or line of road shall be situate, and it shall thereupon become the duty of such vestry or district board to perform all necessary acts and to take all requisite proceedings for carrying the order of the said Metropolitan Board into execution, and for that purpose they shall give notice to the owners or occupiers of the houses and buildings in such street, place, row of houses, or line of road to mark their several houses and buildings with such numbers or names as the said Metropolitan Board shall by their said order have ordered or directed, and to renew the numbers or names of such houses or buildings as often as they are obliterated or defaced; and if any occupier of any such house or building neglect for one week after notice from the said vestry or district board to mark such house or building with such number or name as shall be mentioned and required in the said notice, or to renew the number or name as aforesaid, he shall be liable to a penalty not exceeding forty shillings, and the said vestry or district board may cause such number or name to be so marked or renewed, and recover the expenses thereof from the owner of such house or building by a summary proceeding before a justice of

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the peace; and if any person wilfully destroy, pull down, obliterate, or deface the name of any street or line of road in the metropolis, or the name or number of any house or building therein, or paint, affix, or set up any name or number to any house or building contrary to this enactment, he shall for every such offence forfeit a sum not exceeding forty shillings; and it shall be lawful for the said vestry or district board to cause such name or number so painted, affixed, or set up contrary to the directions in their said notice to be obliterated or destroyed: Provided always, that the powers conferred by this section upon the Metropolitan Board shall extend to the City of *London* and the liberties thereof; and all matters by this section directed and authorised to be done by vestries and district boards shall and may be done within the City of *London* and the liberties thereof by the Commissioners of Sewers of the said City and liberties (*b*).

(*b*) The following rules have been made by the Metropolitan Board of Works in connection with this section:—

Persons building continuous blocks of houses or streets would facilitate their own operations with reference to leases, and the subsequent numbering required by the Metropolitan Board of Works under the statute of 1862, by observing the practice at present followed in numbering houses, thus:—

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[Where such vestry, or district board, or Commissioners of Sewers have for the space

1. St. Paul's Cathedral is recognised as a central point; and the numbering of houses when altered, and also in new streets, begins at the end or entrance, of the street nearest to that building, but where both entrances to a street are about equally distant from that building, the numbering begins at the entrance abutting on the most important thoroughfare.

2. Taking, therefore, the sides of the streets as left and right (assuming that the back is towards St. Paul's) the odd numbers will be assigned to the left hand side, and the even numbers to the right hand side.

3. No name is to be used for a street unless with the approval of the Board; and it must be a name consisting, if possible, of one word, with the addition of "street" or "road," &c., not already in use in the metropolis in street nomenclature. Only such streets as are leading thoroughfares of considerable length can be designated as roads.

4. Names for terraces, or places, or other blocks of houses and sections of streets, and usually known as subsidiary names, will not be recognised, nor such names as are already in use for provincial towns or postal places.

5. If any unauthorised street name is marked on a plan for the formation of a sewer, any action for the approval of such plan may be withheld until such name has been approved by the Board; or, if found objectionable, until an approved name has been substituted by which such street and sewer may be properly recorded and known.

6. The person making such application will be held liable to the Board for any penalty incurred under the statute.

Any person interested in property affected by any order of the Board for re-naming streets or re-numbering houses to be permitted, on application, to make a copy of the order and a tracing of the plan attached thereto; or a certified copy of such order and plan to be furnished to him

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of three months after the receipt of such order of the Board failed to carry the order into execution, the Board may do so and recover the expense, 45 Vict. c. 14, *ante*, p. 211].

Persons omitting to give notice, section 76 of 18 & 19 Vict. c. 120, liable to penalty.

88. If any person shall, without having given the notice directed by the seventy-sixth section of the firstly-recited act, begin to lay the foundation of any new house or building within any parish mentioned in schedule (A.) of the said act, or any district in schedule (B.) of the said act, or to make any drain for the purpose of draining either directly or indirectly into any sewer under the jurisdiction of the vestry or board of such parish or district, he shall become liable to a penalty for every such offence not exceeding five pounds, and to a continuing penalty of forty shillings for each and every day during which he shall omit to give the notice directed by the said act.

Vestry or district board may require payment of costs or expenses from owner or occupier,

96. The two hundred and seventeenth, two hundred and eighteenth, and two hundred and nineteenth sections of the firstly-recited act are hereby repealed; and in lieu

on his paying the actual cost of making the same.

Copies of orders and plans for re-numbering houses, &c., to be made in the superintending architect's department, and to be certified by the clerk of the Board.

The charge for each copy, order, &c., to be an average one of one shilling and sixpence.

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and occupier paying to deduct from rent.

thereof be it enacted, that it shall be lawful for any vestry or district board, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said recited act, or this act, either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorised by the recited act and this act; and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the vestry or district board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable, but the burden of proof

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that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: Provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner and occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant.

Agreement between landlord and tenant not to be affected.

97. If the owner or landlord of any premises from whose rent any amount shall be deducted in respect of any costs, charges, or expenses payable under the firstly-recited act or this act shall hold the premises in respect of which the amount of such costs, charges, or expenses shall be paid at a rent not less than the rack-rent, he shall be entitled to deduct the whole amount paid by him on account of such costs, charges, or expenses from the rent payable by him to his superior landlord; and if he holds at a rent less than the rack-rent, he shall be entitled to deduct from the rent so payable by him a sum bearing the same proportion to the amount so paid by him on account of such costs, charges, or expenses as his rent

Deduction by owner paying rent where amount of expenses deducted from rent paid to him

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shall bear to the rack-rent; and if the owner or landlord from whose rent any deduction be made under the provision last aforesaid be himself liable to the payment of rent for the premises in respect of which the deduction shall be made, and hold such premises for a term of which less than twenty-one years shall be unexpired, but not otherwise, he may deduct from the rent so payable by him a sum bearing the same proportion to the sum deducted from the rent payable to him as the rent payable by him shall bear to the rent payable to him, and so on in succession with respect to every landlord of the same premises both receiving and liable to pay rent in respect thereof, and holding the same for a term of which less than twenty-one years shall be unexpired as aforesaid: Provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him: Provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other

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property, or to affect any contract whatsoever between landlord and tenant.

Roads, &c., laid out as streets to be of full width of forty feet for carriage traffic, and twenty feet for foot traffic.

98. No existing road, passage, or way being of a less width than forty feet shall be hereafter formed or laid out for building as a street for the purposes of carriage traffic, unless such road, passage, or way be widened to the full width of forty feet (*c*), the measurement of the width of such street to be taken half on either side from the centre or crown of the roadway to the external wall or front of the houses or buildings erected or intended to be erected on each side thereof; but where forecourts or other spaces are intended to be left in front of the houses or buildings, then the width shall be measured up to the fence or boundary dividing or intended to divide such forecourts or spaces from the public way, or for the purposes of foot traffic only, unless such road, passage, or way be widened to the full width of twenty feet, measured as aforesaid, or unless such streets respectively shall be open at both ends (*d*), from the ground upwards;

(*c*) This section does not apply where the buildings abut in the rear upon any old lane less than forty feet wide. *Met. Board* v. *Cox*, 19 C. B. N. S. 445; see also *Taylor* v. *Met. Board*, L. R. 2 Q. B. 2; *Met. Board* v. *Clever*, L. R. 3 C. P. 531; 37 L. J. M. C. 126.

(*d*) Such streets must be the full width of forty feet, and be also opened at both ends. *Metropolitan*

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and any road, passage, or way hereafter to be formed or laid out for either of the purposes aforesaid shall be deemed to be a new street, and become subject to all the provisions of the recited acts and this act, and to the provisions and penalties of and under any bye-laws made or to be made in pursuance thereof in relation to sewerage, drainage, or paving, and to width, construction, surface, inclination, and other requirements and particulars.

Metropolitan Board may permit formation of streets of less width, &c.

99. Provided that it shall be lawful for the Metropolitan Board of Works to permit the formation of any such street of less width than hereinbefore provided, or with one opening only, should they under any special circumstances deem it equitable and expedient so to do (*e*).

Board of Works v. *Steed Brothers*, 8 Q. B. D. 445 ; 51 L. J. M. C. 22 ; 45 L. T. 611.

(*e*) Applicants for the approval of the width of streets are required to furnish two copies* of the application and plans in duplicate ; the plans to be drawn to a scale of eighty-eight feet to the inch, or five feet to one mile. A copy is forwarded to the vestry or district board in whose locality the proposed new street is situate, with an intimation that within fourteen days thereafter suggestions may be made with reference to such application, as in the case of lines of frontage. A key plan of the locality and two copies of longitudinal sections showing intended levels of proposed roads are also required.

* Two further copies of approved plans are required ; one of which is signed and returned to the applicant.

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Acts to be construed as one Act.

110. The said recited acts and this act shall be construed together as one act.

Short titles.

111. The recited acts may be respectively cited for all purposes as "The Metropolis Management Act, 1855," "The Metropolis Management Amendment Act, 1856," and "The Metropolis Management Amendment Act, 1858;" and this act may be cited for all purposes as "The Metropolis Management Amendment Act, 1862."

Interpretation of terms.

112. In the construction of the recited acts and this act the term "Metropolis" shall be deemed to include the City of *London* and the parishes and places mentioned in the schedules (A), (B), and (C) to the firstly-recited act; the word "drain" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-recited act, and also any drain for draining a group or block of houses by a combined operation, laid or constructed before the first day of *January* one thousand eight hundred and fifty-six, pursuant to the order or direction

No plan submitted for the formation of a new street can be entertained unless the applicant at the same time proposes the name to be given to such street, not elsewhere in use.

The name of each street, as approved by the Board, will have to be affixed on posts at both ends of such street until the houses are built, when the name must be affixed according to law.

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or with the sanction or approval of the Metropolitan Commissioners of Sewers; the expression "water company" shall mean and include any of the companies enumerated in the twenty-ninth section of the act of the session of the fifteenth and sixteenth years of the reign of Queen *Victoria*, chapter eighty-four, for the making better provision respecting the supply of water to the metropolis, and also any other company, board, or commission, association, person, or partnership, corporate or unincorporate, for the time being supplying the metropolis or any part thereof with water for domestic use; the word "cattle" shall include sheep, lambs, and swine; the word "street" shall be deemed to apply to and include the subject matters specified in the two hundred and fiftieth section of the firstly-recited act, and also any mews and a part thereof; the expression "new street" (*f*) shall apply to and include all streets hereafter to be formed or laid out, and a part of any such street, and also all streets, the maintenance of the paving and roadway whereof had not, previously to the passing of this act, been taken into charge and assumed by the Commis-

(*f*) The expression "new street" in this section is not confined to streets dedicated to the public. *Vestry of St. Mary, Islington* v. *Barrett*, L. R. 9 Q. B. 287; 43 L. J. M. C. 85.

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sioners, trustees, surveyors, or other authorities having control of the pavements or highways in the parish or place in which such streets are situate, and a part of any such street, and also all streets partly formed or laid out; the word "pave" shall apply to and include the formation of the roadway or footway of any street; the word "clerk" shall include any officer called or to be called "secretary;" the word "surveyor" shall include any officer called or to be called "engineer;" the word "print" shall apply to and include every mode of taking impressions, whether by letterpress, stereotype, lithography, or otherwise (*g*).

(*g*) By sect. 107 a limitation of six months is placed on the recovery of all penalties under this and the earlier act. See note (*g*), p. 242.

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THE COMPANIES' CLAUSES CONSOLIDATION ACT, 1845.

8 VICT. c. 16.

AND with respect to the settlement of disputes by arbitration, be it enacted as follows:—

128. When any dispute authorised or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration shall have arisen, then unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last mentioned party fail

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to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in the dispute; and in such case the award or determination of such single arbitrator shall be final.

129. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte;* and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

130. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they

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shall differ, and if such umpire shall die, or refuse, or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

131. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days, after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway company shall be one party to the arbitration on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

132. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

133. Except where by this or the special act or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration to be deter-

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mined by the arbitrators, shall be in the discretion of the arbitrators or their umpires, as the case may be.

134. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

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THE METROPOLITAN FIRE BRIGADE ACT, 1865.

28 & 29 Vict. c. 90.

This act establishes a Metropolitan Fire Brigade, under the control of the Metropolitan Board of Works, who are responsible for the protection of the metropolis against losses by fire, and have powers given to them to compel contributions to the support of the brigade (*a*).

(*a*) It is not the imperative duty of the fire brigade to take possession of property on premises where a fire breaks out, but the statute gives them power to do so. *Joyce* v. *Met. Board of Works*, 44 L. T. 811; 45 J. P. 667.

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METROPOLITAN BUILDING ACT, 1855.

18 & 19 VICT. c. 122, s. 85.

(PARTY STRUCTURES.)*

Seal of Metropolitan Board of Works.

To Mr.
of
or whomsoever it may concern.

WITH reference to the Party Structure under-mentioned, I hereby give you notice that, after the lapse of three months from the date hereof, I intend to exercise the right given me by the Metropolitan Building Act, by executing the works under-mentioned :—

Building referred to, and Date of Erection (*sec.* 83) :—

Dwelling House
Warehouse
Public Building

Situation of Building :—

Parish
Street
Number in Street (if any)

---

* A marginal sketch of the building is often advisable to assist in the description of the situation, &c.

This and the following form are issued by the Board, with instructions on the back as to filling them up, mode of service, &c.

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The part of the Building referred to is that wall or structure which separates the building from the building on the thereof, and being No. in the said street.

Nature of the proposed Work :—

Time within which consent to the above is to be expressed, or after which dissent will be inferred :—

Fourteen days from the delivery hereof.

Surveyor appointed by me to superintend the work, and to settle on my behalf all matters of difference that may arise in relation thereto :—

Name

Address

Date of Notice day of 18

Signature of Building Owner

Address

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METROPOLITAN BUILDING ACT, 1855.

18 & 19 VICT. C. 122, S. 84.

(PARTY STRUCTURES.)*

Seal of Metropolitan Board of Works.

To Mr.
of
or whomsoever it may concern.

WITH reference to the notice of Works to be executed by you on the Building under-mentioned, and served upon me the day of , I hereby require you, for my convenience, to execute the works under-mentioned :—

Building referred to :—

Dwelling House
Warehouse
Public Building

Situation of Building :—

Parish
Street
Number in Street (if any)

---

* By s. 87, the adjoining owner may require security from the building owner before commencing any work ; but as that must be special and a matter of agreement or adjustment of difference, it is not introduced into the general form.

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Nature of the Work required by adjoining Owner :—

Time for commencement of Work :—

As the time specified in your notice will cause me unnecessary inconvenience, I require you to delay works until the day of .

Time within which your consent to the above is to be expressed, or after which dissent will be inferred :—

Fourteen days from the delivery hereof.

Surveyor appointed by me to superintend the work, and to settle on my behalf all matters of difference that may arise in relation thereto :—

Name

Address

Date of Notice day of 18

Signature of adjoining Owner

Address

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PROFESSIONAL PRACTICE AND CHARGES OF ARCHITECTS.

Schedule sanctioned by the Royal Institute of British Architects, and Confirmed at a General Conference of Architects of the United Kingdom, 1872.

Re-issue, 31st March, 1882.

1. THE usual remuneration for an architect's services, except as hereinafter mentioned, is a commission of 5 per cent. on the total cost of the works executed from his designs; besides which all travelling and other incidental expenses incurred by the architect are paid by the employer, who may be also charged for time occupied in travelling if the work be executed at a considerable or inconvenient distance, or if more than ordinary personal attendance is required. The usual remuneration is a 5 per cent. commission besides expenses;

2. But for all works in which the expenditure is mainly for skilled labour and not for materials—*e.g.*, in designs for the fittings and furniture of buildings, for their decoration with painting or mosaic, for their sculpture, for stained glass, and other like works—the architect's charge is not made by way of commission on the cost, but should be regulated by special circumstances and conditions. except for decorative] work.

3. When several similar but distinct buildings are erected at the same time from a single specification and one set of drawings and under one contract, the commission of 5 per cent. should be charged on the cost of one such building, and a modified arrangement should be made in respect of the others. Repetition in some cases justifies a lower rate,

4. In works of small value, say £500 in amount, 5 per cent is not remunerative, and the charge should and small outlay a higher rate

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of percentage.

be by time, or by an ascending scale reaching 10 per cent. for works under £100.

Commission is to be reckoned as if for new materials and a builder employed, chargeable on all executed, and 2½ per cent. on all omitted work.

5. The commission is reckoned upon the total cost of the works, valued as if executed by a builder, and of new materials. Two and a half per cent. is charged upon any works originally included in the contract, but subsequently omitted in execution.

This is exclusive of the charge for measuring extras and omissions.

An architect always entitled to payments on account.

6. The architect is entitled during the progress of the building to payment on account at the rate of 5 per cent. on the instalments paid to the builder, or otherwise to half the commission on the signing of the contract, or the commencement of the works, and the remainder by instalments as above.

N.B.—The terms of payment adopted by Her Majesty's Office of Works and Public Buildings may also be taken as an equitable method of payment on account, viz. :—

One-third part of the commission shall be paid to the architect immediately after the signing of the contract :

One-third part shall be paid to the architect as soon as one half of the contract sum has been paid to the builder :

And the remaining one-third part shall be paid to the architect after the final payment to the builder.

Charge for services,

7. The above charges do not cover professional services in connection with negociations for site, in surveying it and taking levels, in making surveys and plans of buildings to be altered, in arrangements respecting party walls or right of lights, nor services incidental to arrangements consequent upon the failure of builders whilst carrying out work, or in cases of subsequent litigation ; but all such services are charged for in addition.

and material alterations of plan by time.

8. If the employer, after having agreed to a design, and had the contract drawings prepared, should have material alterations made, whether before or after the contract is prepared, an extra charge should be made, unless such alterations are rendered necessary by an unreasonable excess in the builder's tender beyond the architect's approximate estimate.

Charge for plans and

9. If the architect should have drawn out the

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approved design complete, with plans, elevations, sections, and specification, the charge is half the commission upon the estimated cost. If he should, in addition, have procured tenders in accordance with the instruction of his employer, the charge is one-half per cent. extra. specification only half the commission, adding ½ per cent. if tenders are obtained.

10. For works in the alteration of premises, a special charge may be made on account of the special difficulties and trouble generally involved. Alterations to premises may be charged at higher rate.

11. The following are the professional services included in the ordinary charge of 5 per cent. :— The commission covers sketches, plans, details, one set of tracings, and duplicate specification, instructions, superintendence, examining accounts;

- The requisite preliminary sketches, drawings, and specifications sufficient for an estimate and contract.
- Detailed drawings and instructions for execution.
- One set of tracings and duplicate specification.
- General superintendence of works (exclusive of clerk of the works).
- Examining and passing the accounts, exclusive of measuring and making out extras and omissions.

12. No additional remuneration is due for making an approximate estimate, such as may be obtained, for instance, by cubing out the contents. If a detailed estimate be required by the employer, an additional per-centage charge may be made. also approximate estimate.

13. The charge per day made by architects depends upon their professional position, the minimum charge being three guineas per day. The usual charge per day.

14. The above payments alluded to in this document are to be made by the employer to the architect, who is not to receive commission or payment of any kind from the builder, or any tradesman, in respect of works executed under the architect's direction. All payments to architect to be from employer.

15. When an architect supplies builders with quantities, on which to form tenders for executing his designs, he should do so with the concurrence of his employer, and it is desirable, when practicable, that the architect should be paid by him rather than by the builder, the cost of such extra labour not being included in the commission of 5 per cent. Quantities.

16. In respect of the ownership of drawings and specifications, it has hitherto been the general custom for the architect to be paid for their use only, those documents remaining his property. Ownership of drawings.

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N.B.—In case of sketches for works abandoned, this custom is recognised by Her Majesty's Office of Works and Public Buildings. No authoritative decision in the courts of law has, however, as yet been given on the subject: it is therefore desirable, for the present at least, that the architect should have a distinct understanding with his employer on this point.

Estates.

17. The charge for taking a plan of an estate, laying it out, and arranging for building upon it, should be regulated by the time, skill and trouble involved.

18. For actually letting the several plots (in ordinary cases) a sum not exceeding a whole year's ground rent may be charged.

19. For inspecting the buildings during their progress (so far as may be necessary to ensure the conditions being fulfilled) and finally certifying for lease, the charge should be a per-centage not exceeding one-half per cent. up to £5,000, and above that by special arrangement.

20. All the above fees to be exclusive of travelling expenses, and time occupied in travelling, as before mentioned.

21. The charge for the above does not include the commission for preparing specification, directing, superintending, and certifying the proper formation of roads, fences, and other works executed at the cost of the employer, nor for putting the plans on the leases.

Valuations.

22. The following definite charges are recognised for valuation of property :—

The charge throughout is 1 per cent. on the first £1,000, and half per cent. on the remainder up to £10,000. Below £1,000, and beyond £10,000, by special arrangement. These charges do not include travelling expenses, nor attendance before juries, arbitrators, &c.

Dilapidations.

23. The charge for estimating dilapidations is 5 per cent. on the estimate, and in no case less than two guineas.

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HEADS OF CONDITIONS OF BUILDERS' CONTRACTS.

Sanctioned by the Royal Institute of British Architects.

1. The contractors are to provide everything of every sort and kind which may be necessary and requisite for the due and proper execution of the several works included in the contract according to the true intent and meaning of the drawings and specification taken together, which are to be signed by the architect and the contractors, whether the same may or may not be particularly described in the specification or shown on the drawings, provided that the same are reasonably and obviously to be inferred therefrom, and in case of any discrepancy between the drawings and the specification, the architect is to decide which shall be followed.

2. The contractors are to conform in all respects to the provisions and regulations of the Metropolis Local Management Act and the Metropolis Buildings Acts, and to the regulations and bye-laws of the Metropolitan Board of Works and of the Local Authorities, and they are to give all notices required by the said Acts to be given to any local authorities, and to pay all fees payable under any of the said Acts to any such authorities, or to any public officer in respect of the works.

3. The contractors are to set out the whole of the works, and during the progress of the works to amend, on the requisition of the architect, any errors which may arise therein, and upon request are to provide the necessary appliances, or furnish the necessary vouchers, to prove that the several materials are such as are described. The contractors are to provide all plant, labour, and materials which may be necessary and requisite for the works, all materials and workmanship being the best of their respective

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kinds; and the contractors are to leave the works in all respects clean and perfect at the completion thereof.

4. Complete copies of the drawings and specification signed by the architect are to be furnished by him or by the measuring surveyor to the contractors for their own use, and the same or copies thereof are to be kept on the buildings in charge of a competent foreman, who is to be constantly kept on the ground by the contractors, and to whom the instructions can be given by the architect. The contractors are not to sublet the works, or any part thereof, without the consent in writing of the architect.

5. The architect is to have at all times access to the works, which are to be entirely under his control. He may require the contractors to dismiss any person in the contractors' employ upon the works who may be incompetent or misconduct himself, and the contractors are forthwith to comply with such requirement.

6. The contractors are not to vary or deviate from the drawings or specification, or execute any extra work of any kind whatsoever, unless the same be required to comply with any of the provisions of any of the acts of parliament, regulations, or bye-laws hereinbefore mentioned, or unless upon the authority of the architect, to be sufficiently shown by any order in writing, or by any plan or drawing expressly given and signed or initialed by him as an extra or variation, or by any subsequent written approval signed or initialed by him. In cases of day work, all vouchers for the same are to be delivered to the architect or clerk of the works, at latest during the week following that in which the work may have been done, and only such day work is to be allowed for, as such, as may have been authorised by the architect to be so done, unless the work cannot from its character be properly measured and valued.

7. Any authority given by the architect for any alteration or addition in or to the works is not to vitiate the contract, but all additions, omissions, or variations, made in carrying out the works for which a price may not have been previously agreed upon, are to be measured and valued, and certified for by the architect, and added to or deducted from the amount of the contract, as the case may be, according

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to the schedule of prices annexed, or where the same may not apply at fair measure and value.

8. All work and materials brought and left upon the ground by the contractors, or by their order, for the purpose of forming part of the works, are to be considered to be the property of the employer, when payment shall have been made of the amount of any certificate in which the value thereof shall be included, and in such case the same are not to be removed or taken away by the contractors, or any other person, without the special licence and consent of the architect; but the employer is not to be in any way answerable for any loss or damage which may happen to, or in respect of, any such work or materials, either by the same being lost or stolen, or injured by weather or otherwise.

9. The architect is to have full power to require the removal from the premises of all materials which in his opinion are not in accordance with the specification, and in case of default the employer is to be at liberty to employ other persons to remove the same without being answerable or accountable for any loss or damage that may arise or happen to such materials; and the architect is also to have full power to require other proper materials to be substituted: and in case of default the employer may cause the same to be supplied, and all costs which may attend such removal and substitution are to be borne by the contractors.

10. Should any of the works be, in the opinion of the architect, executed with improper materials or defective workmanship, the contractors are, when required by the architect, during the progress of the work, forthwith to re-execute the same, and to substitute proper materials and workmanship, and, in case of default of the contractors in so doing within a reasonable time, the architect is to have full power to employ other persons to re-execute the work, and the cost thereof is to be borne by the contractors.

11. Any defects, shrinkage and other faults, which may appear within months from the completion of the building, and arising out of defective or improper materials or workmanship, are, upon the direction of the architect, to be amended and made good by the contractors at their own cost, unless the architect shall decide that they ought to be paid for

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the same, and in case of default the employer may recover from the contractors the cost of making good the works.

12. The contractors are to insure the building against loss or damage by fire in the office to be approved, in the joint names of the employer and contractors, for half the value of the works executed, until it shall be covered in, and thenceforth until completion in three-fourths of the amount of such value, and are, upon request, to produce to the architect the policies and the receipts for the premiums for such insurance. All moneys received under any such policies are to be applied in or towards the rebuilding or reparation of the works destroyed or injured. In case of neglect the employer is to be at liberty to insure and deduct the amount of the premiums paid from any moneys payable to the contractors.

13. The building, from the commencement of the works to the completion of the same, is to be under the contractors' charge; they are to be held responsible for, and to make good, all injuries, damages, and repairs, occasioned or rendered necessary to the same by fire or causes over which the contractors shall have control, and they are to hold the employer harmless from any claims for injuries to persons or for structural damage to property happening from any neglect, default, want of proper care, or misconduct on the part of the contractors, or of anyone in their employ, during the execution of the works.

14. The employer is at all times to have free access to the works, and is to have full power to send workmen upon the premises to execute fittings and other works not included in the contract, for whose operations the contractors are to afford every reasonable facility during ordinary working hours, provided that such operations shall be carried on in such a manner as not to impede the progress of the works included in the contract, but the contractors are not to be responsible for any damage which may happen to or be occasioned by any such fittings or other works.

15. The contractors are to complete the whole of the works (except painting and papering, or such other works as the architect may desire to delay) within calendar months after the commence-

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ment of the same, unless the works be delayed by reason of any inclement weather, or causes not under the contractors' control, or in case of combination of workmen, or strikes, or lock-out affecting any of the building trades, for which due allowance shall be made by the architect; and then the contractors are to complete the works within such time as the architect shall consider to be reasonable, and shall from time to time in writing appoint, and in case of default the contractors are to pay or allow to the employer, as and by way of liquidated and agreed damages, the sum of £ per week for every week during which they shall be so in default, until the whole of the works (except as aforesaid) shall be so completed, provided the architect shall in writing certify that the works could have been reasonably completed within the time appointed.

16. If the contractors shall become bankrupt, or compound with or make any assignment for the benefit of their creditors, or shall suspend or delay the performance of their part of the contract (except on account of causes mentioned in clause 15, or on account of being restrained or hindered under any proceedings taken by parties interested in any neighbouring property, or in consequence of not having proper instructions for which the contractors shall have duly applied), the employer, by the architect, may give to the contractors or their assignee or trustee, as the case may be, notice requiring the works to be proceeded with, and in case of default on the part of the contractors or their assignee or trustee for a period of days, it shall be lawful for the employer, by the architect, to enter upon and take possession of the works, and to employ any other person or persons to carry on and complete the same, and to authorise him or them to use the plant, materials and property of the contractors upon the works, and the costs and charges incurred in any way in carrying on and completing the said works are to be paid to the employer by the contractors, or may be set off by the employer against any moneys due, or to become due, to the contractors.

17. When the value of the works executed and not included in any former certificates shall from time to time amount to the sum of £ , or otherwise at

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the architect's reasonable discretion, the contractors are to be entitled to receive payment at the rate of 80 per cent. upon such value until the difference between the percentage and the value of the works executed shall amount to per cent. upon the amount of the contract, after which time the contractors are to be entitled to receive payment of the full value of all works executed and not included in any former payment, and the architect is to give to the contractors certificates accordingly, and when the works shall be completed, or possession of the building shall be given up to the employer, the contractors are to be entitled to receive one moiety of the amount remaining due, according to the best estimate of the same that can then be made, and the architect is to give to the contractors certificates accordingly, and the contractors are to be entitled to receive the balance of all moneys due or payable to them under or by virtue of the contract within months from the completion of the works, or from the date of giving up possession thereof to the employer, whichever shall first happen. The contractors are to be entitled to receive any sum reserved for painting and papering or otherwise on the completion thereof. Provided always that no final or other certificate is to cover or relieve the contractors from their liability under the provisions of Clause No. 11, whether or not the same be notified by the architect at the time or subsequently to granting any such certificate.

18. A certificate of the architect, or an award of the referee hereinafter referred to, as the case may be, showing the final balance due or payable to the contractors, is to be conclusive evidence of the works having been duly completed, and that the contractors are entitled to receive payment of the final balance, but without prejudice to the liability of the contractors under the provisions of Clause No. 11.

19. If the employer shall make default in paying any moneys to which the contractors may become entitled, for days after the amount thereof shall have been certified, or if the works be delayed for months by or under any proceedings taken by any other parties, the contractors are to be at liberty to suspend the works, and to require payment for all works executed and all materials wrought up, and

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for any loss which they may sustain upon any goods or materials purchased for the works, and in such case the contractors are not to be bound to proceed further with the works contracted for. The contractors are to be entitled to such interest and at such rate as the architect shall certify upon all moneys payable to the contractors, payments of which may have been unduly delayed.

20. Provided always that in case any question, dispute, or difference shall arise between the employer, or the architect on his behalf, and the contractors as to what additions, if any, ought in fairness to be made to the amount of the contract by reason of the works being delayed through no fault of the contractors, or by reason or on account of any directions or requisitions of the architect, involving increased cost to the contractors beyond the cost properly attending the carrying out the contract according to the true intent and meaning of the signed drawings and specification, or as to the works having been duly completed, or as to the construction of these presents, or as to any other matter or thing arising under or out of this contract, except as to matters left during the progress of the works to the sole decision or requisition of the architect under Clauses Nos. 1, 9, and 10, or in case the contractors shall be dissatisfied with any certificate of the architect under Clause No. 7, or under the proviso in Clause No. 15, or in case he shall withhold or not give any certificate to which they may be entitled, then such question, dispute, or difference, or such certificate, or the value or matter which should be certified, as the case may be, is to be from time to time referred to the arbitration and final decision of , architect, or in the event of his death or unwillingness to act, then of* , architect, or in the event of his death or unwillingness to act, then of an architect being a Fellow of the Royal Institute of British Architects, to be appointed on the request of either party by the President for the time being of such Institute, and the award of such referee is to be equivalent to a certificate of the architect, and the contractors are to be paid accordingly.

*This blank should be filled in with the name of a Fellow of the Institute.

21. Upon every or any such reference the costs of and incidental to the reference and award respectively

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shall be in the discretion of the referee or arbitrator, who may determine the amount thereof or direct the same to be taxed, as between solicitor and client, or as between party and party, or otherwise, and may award and direct by whom and to whom and in what manner the same shall be borne and paid, and this submission may be made a rule of any division of the High Court of Justice upon the application of either party, who may instruct counsel to consent thereto for the other party without any notice being given to such party.

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FORM OF BUILDING CONTRACT.*

MEMORANDUM OF AGREEMENT made the day of , between A. B., of &c., and C. D., of &c., builders and co-partners (hereinafter called "the builders"), of the first part, and E. F., of &c., G. H., of &c., and I. K., of &c., carrying on the business of bankers, in co-partnership under the name or style of E. F. and Company, of the second part. Whereas the said parties hereto of the second part being desirous that a banking-house with suitable offices shall be erected on a certain piece of ground belonging to them, situate in street, in the city of , have appointed L. M., of &c., to be the architect for that purpose. And whereas plans, drawings, and elevations of the said intended banking-house and offices, and a specification of the works to be done, and of the materials to be provided in and for the erection of the same, have been prepared by the said L. M., and approved of by the parties hereto of the second part. And whereas the builders are willing to contract for the execution of the said works for the sum of £ . And whereas the said plans, drawings, elevations, and specification have been signed by the builders and by the said L. M., and are annexed by way of schedule to this agreement, and duplicates of the same respectively are intended to be deposited with the clerk of the works to be employed as hereinafter mentioned, for the use and inspection of the builders, who are to have access thereto at all times for the purpose of carrying on the said works. And whereas it is in-

Parties.

Recite that parties of second part are desirous of having a banking-house erected.

Appointment of architect.

That plans, &c., have been prepared.

That builders are willling to contract.

That plans, &c., have been signed by builders and architect.

* From "Prideaux's Precedents in Conveyancing," 11th Edition, 1882. From this Precedent shorter forms of Contract to build can be framed.

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Agreement that contract shall be secured by bond.

tended that the due performance of this contract shall be secured by the joint and several bond of the builders, and of N. O., of &c., and P. Q., of &c., as sureties for the builders.

Now it is hereby agreed between the parties hereto as follows :—

Builders to erect banking house according to specification, &c.

1. The builders will well and substantially erect and complete the said banking-house and offices in a good, lasting, and workmanlike manner, according to the instructions and directions and in the manner expressed or contained in the said specification, plans, drawings, and elevations; and will provide, execute, perform, and fully complete all and singular the materials and works respectively specified, required, and set forth in the said specification, plans, drawings, and elevations, or to be implied therefrom, or to be incidental thereto, or to be hereafter specified or required in such explanatory instructions and drawings (being in conformity with the said original specification, plans, drawings, and elevations), and also in such additional instructions and drawings (not being so in conformity as aforesaid) as shall, from time to time, during the progress of the said works hereby contracted for, be provided by the said L. M., or other the architect for the time being of the parties hereto of the second part; and will complete all the said works with the materials of the best quality, and in the most substantial and workmanlike manner, and to the satisfaction of the said L. M., or such other architect as aforesaid, without reference to any other person; and will, in all respects, comply with and abide by the true intent and meaning of the said specification, plans, drawings, and elevations, and of this agreement.

To cover in and complete by certain dates or otherwise to pay a fixed penalty.

2. The builders will cover in the roof of the said banking-house on or before the day of ; and will finish and complete the said banking-house and offices on or before the day of ; and if the said banking-house and offices shall not be completed on or before the said day of , the builders shall forfeit, out of the moneys which shall be due to them by virtue of this agreement, the sum of £10 for every day which shall elapse after the day of , until the said banking-houses and offices shall be completed. Provided always, that in case the builders shall be prevented by any strike

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among the workmen from complying with this article, the architect may extend the time for the completion of the works for such reasonable period as he may think fit.

3. If the builders shall become bankrupts, or shall from any cause whatever be prevented from or delayed in proceeding with and completing the said works according to the terms and conditions of this present contract, or shall not proceed in the said works to the satisfaction of the said L. M., or such other architect as aforesaid, it shall be lawful for the said L. M., or such other architect as aforesaid, to leave or cause to be left at the usual place of abode or business of the said builders, or any of them, or of their sureties or either of them, a notice or notices in writing for the said builders to proceed regularly and effectually with the said works; and in case the said builders shall, for seven days after such notice is so left as aforesaid, make default in regularly and effectually proceeding with the said works, it shall be lawful for the said L. M., or such other architect as aforesaid, to employ any other workman, either by contract or measure and value or otherwise, to proceed with the said works and complete the same, and pay to the said workmen out of the moneys which shall be then due to the said builders on account of this contract, the amount of their charges for the same, and for all necessary materials to be found and provided for such completion; and the moneys which previously to such default shall have been paid to the said builders on account or in respect of any work or materials then already done, executed, or provided by them, shall be considered as the full payment and satisfaction, not only for the said work and materials in respect of which such payments shall have been made, but also for any other work and materials which the said builders shall then have done, executed, or provided, although no such payment shall have been previously made in respect thereof; and all the balance and moneys whatsoever which then or afterwards would have become payable or due to the said builders under this present contract, if this present clause had not been inserted, together with all the materials then delivered for the purpose of the works

If builders become bankrupt, &c., architec may, after notice, employ others to complete works.

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hereby contracted for and then being upon or about the site of the said banking-house and offices, shall, upon such default as aforesaid, become the absolute property of the said parties hereto of the second part; and if the said balance, moneys, and materials so forfeited and to become the property of the parties hereto of the second part as aforesaid be insufficient to cover such charges for workmen and materials as are last hereinbefore directed to be paid thereout, then and in such case the said builders shall and will make good and pay such deficiency upon demand.

Architect may remove workmen for incompetency or other causes.

4. If the said L. M., or such other architect as aforesaid, shall at any time or times consider any of the workmen employed by the said builders on the works as in anywise incompetent, or as acting improperly, it shall in every such case be lawful for the said L. M., or such other architect as aforesaid, to discharge such workman or workmen, and the said builders shall without delay put another workman or other workmen in his or their place.

Architect to appoint a clerk of the works.

5. The said L. M., or such other architect as aforesaid, may appoint a suitable person to be clerk of the works, to superintend the works hereby contracted for, and to be constantly on the premises during their progress; and the clerk shall be paid by the parties hereto of the second part.

Architect or clerk of the works may remove unsound materials.

6. In case any of the materials to be brought on the said premises by the said builders shall be considered by the said L. M., or such other architect as aforesaid, or the said clerk of the works, unsound or in any respect improper, the said builders will, upon notice in writing to them or their foreman on the premises, given by the said L. M., or such other architect as aforesaid, or by the said clerk of the works, cause the same to be removed from off the ground, and proceed with the said works with materials corresponding with the said specification and instructions, and approved of by the said L. M., or such other architect as aforesaid; and in default of such removal within three days after such last-mentioned notice, it shall be lawful for the said L. M., or such other architect as aforesaid, to cause the same to be removed to such place or places as he may think proper, without being in anywise

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answerable or accountable for any loss or damage that shall happen to any materials so removed as aforesaid, and to cause proper materials to be substituted for the same, and to pay all expenses attending such removal and substitution out of the moneys which shall become due to the said builders by virtue of this contract.

Builders to take down unsound work and rebuild.

7. In case the said L. M., or such other architect as aforesaid, shall consider any part of the said works to be executed in an unsound and improper manner, the said builders will cause the same immediately to be taken down and executed in a proper manner, and to the satisfaction of the said L. M., or such other architect as aforesaid, without any extra charge or expense whatever.

Power to architect or parties of the second part to direct additions or alterations.

8. If the said L. M., or such other architect as aforesaid, or the parties hereto of the second part, shall think proper at any time or times to make any alterations or additions to or omissions in the works hereby contracted for, he or they shall give to the said builders written instructions for such alterations, additions, or omissions, signed by the said L. M., or such other architect as aforesaid; but the said builders shall not be considered to have authority for any alteration, addition, or omission, or to make any claim for the value or otherwise in respect thereof, without such written instructions so signed as aforesaid; and should any alteration or addition be charged for or brought into any day account, the said day account shall be delivered at the office of the said L. M., or such other architect as aforesaid, on the Tuesday morning next ensuing after such day work may have been done, signed by the clerk of the works, and no account unless so signed and delivered shall be admitted by the said L. M., or such other architect as aforesaid.

Value of alterations, &c., to be ascertained and added to original contract-money.

9. Any such alteration, addition, or omission shall not vacate this present contract, but shall be ascertained by an admeasurement or valuation, to be made by the said L. M., or such other architect as aforesaid, and the value thereof so ascertained shall be added to or deducted from the said sum of £ , as the case may be, and the addition in value (if any) shall be paid for in the same manner and at the same time as hereinafter is expressed for the pay-

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ment of the ultimate balance of the said sum of £ .

Any unauthorised deviations to be corrected at builders cost.

10. Any deviation made in the said works from the said original plans, drawings, elevations, and specification (except such deviations as shall be so ordered as last aforesaid) shall be altered and corrected at the costs and expenses of the said builders.

Builders to repair damage.

11. Any damage arising from accidents or carelessness of workmen or otherwise to the said works hereby contracted for, or to the materials or implements therein used, shall be borne and effectually made good by the said builders at their own costs and charges.

Builders to insure.

12. The said builders shall at their own costs and charges insure, in some or one of the offices for insurance against fire, in London or Westminster, to be approved by the said parties hereto of the second part, and in the joint names of the said builders and of some person appointed in that behalf by the parties hereto of the second part, the said buildings from loss or damage by fire in the sum of £ , and shall continue such insurance until the said L. M., or such other architect as aforesaid, shall certify the said banking-house and offices to be completed.

Builders to pay fees of district surveyor, and generally will execute all works described in specification, &c., or to be implied therefrom.

13. The said builders shall pay all the fees of the district surveyor, or other fees or official demands arising from the execution of the said works, and will generally do, execute, and provide, not only all the works and materials described and specified in the said plans, drawings, elevations, and specification respectively, but likewise all such works and materials as are necessarily implied or may be reasonably inferred in or from the said plans, drawings, elevations, and specification respectively, for the erection and completion of the said buildings and appurtenances, although the same may not happen to be therein expressly mentioned as to be done by the said builders, the true intent and meaning of these presents being that the works and materials hereby contracted to be done, executed, and provided, shall include all that is requisite for the building and completing the said building and offices according to the said plans, drawings, elevations, and specification.

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14. The said builders will not, unless with the consent of the said L. M., or such other architect as aforesaid, make any sub-contract for the execution of the works hereby contracted for, or any part thereof, nor unless with such consent as aforesaid, assign or underlet this present contract. Builders not to make sub-contract without consent.

15. The said sum of £ shall be paid to the said builders in manner following (that is to say), £ part thereof shall be paid by twelve instalments of £ each, upon the certificate from time to time of the said L. M., or such other architect as aforesaid, that work and materials to a sufficient amount shall have been done, executed, or provided by the said builders to the satisfaction of the said L. M., or such other architect as aforesaid, and £ , the balance of the said sum of £ , shall be paid within three calendar months after the whole of the said works shall be completed and finished, and the accounts made up. The contract money to be paid by instalments.

16. The said builders shall not be entitled to demand or receive the said balance of £ until the said L. M., or such other architect as aforesaid, shall certify under his hand that the whole of the said works have been completed and finished to his satisfaction. Balance to be paid on certificate of architect of completion of works.

17. The decision of the said L. M., or such other architect as aforesaid, with respect to the amount, state, and condition of the works actually executed, and also in respect to any and every question that may arise concerning the construction of the present contract, or the said plans, drawings, elevations, and specification, or the execution of the works hereby contracted for, or in anywise relating thereto, shall be final and without appeal. Decision of architect to be final.

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